TITLE 49—TRANSPORTATION

Chap.		Sec.
1.	Interstate Commerce Act, Part I; General Provisions and Railroad and Pipe Line Carriers	1
2.	Legislation Supplementary to "Interstate Commerce Act"	41
3.	Termination of Federal Control [Omitted]	71
4.	Bills of Lading	81
5.	Inland Waterways Transportation	141
6.	Air Commerce	171
7.	Coordination of Interstate Railroad Transportation [Omitted or Repealed]	250
8.	Interstate Commerce Act, Part II; Motor Carriers	301
9.	Civil Aeronautics [Transferred, Omitted, or Repealed]	401
10.	Training of Civil Aircraft Pilots [Omitted or Repealed]	751
11.	Seizure and Forfeiture of Carriers Transporting, etc., Contraband Articles	781
12.	Interstate Commerce Act, Part III; Water Carriers	901
13.	Interstate Commerce Act, Part IV; Freight Forwarders	1001
14.	Federal Aid for Public Airport Development	1101
15.	International Aviation Facilities	1151
16.	Development of Commercial Aircraft [Omitted]	1181
17.	Medals of Honor for Acts of Heroism	1201
18.	Airways Modernization [Repealed]	1211
19.	Interstate Commerce Act, Part V; Loan Guaranties	1231
20.	Federal Aviation Program	1301
21.	Urban Mass Transportation	1601
22.	High-Speed Ground Transportation	1631
23.	Department of Transportation	1651
24.	Natural Gas Pipeline Safety	1671
25.	Aviation Facilities Expansion and Improvement	1701
26.	Hazardous Materials Transportation Control [Repealed]	1761
27.	Hazardous Materials Transportation	1801
28.	National Transportation Safety Board	1901

CHAPTER 1—INTERSTATE COMMERCE ACT, PART I; GENERAL PROVISIONS AND RAILROAD AND PIPE LINE CARRIERS

Sec.

1. Regulation in general; car service; alteration of line.
   - (1) Carriers subject to regulation.
   - (2) Transportation subject to regulation.
   - (3) Definitions.
   - (4) Duty to furnish transportation and establish through routes; division of joint rates.
   - (5) Just and reasonable charges; applicability; criteria for determination.
   - (5½) Exchange of services.
   - (6) Classification of property for transportation; regulations and practices; demurrage charges.
   - (7) Free transportation for passengers prohibited; exceptions; penalty.
   - (8) Transportation of commodity manufactured or produced by railroad forbidden.
   - (9) Switch connections and tracks.
   - (10) "Car service" defined.
   - (11) Duty to furnish car service; rules and regulations.
   - (12) Distribution of coal cars; failure to prorate; penalty; applicability of unit-train and non-unit-train service; definition.
   - (13) Rules and regulations as to car service to be filed, etc.
   - (14) Establishment by Commission of rules, etc., as to car service; procedures applicable.
   - (15) Powers of Commission in case of emergency.
   - (16) Rerouting of traffic on failure of initial carrier to serve public.
   - (17) Directions of Commission as to car service; disobedience; rights of States; bribery.
   - (18) Extension or addition of lines; certificate required; procedures applicable to application for certificate; petition or initiative of Commission; agreements for ownership or use of spur, etc., tracks; limitations on authority of Commission; injunctions and penalty for violations.

1a. Abandonment and discontinuance of rail service.
   - (1) Authorization pursuant to certification by Commission; application and notice of intent required in accordance with rules and regulations; statutory provisions applicable.
   - (2) Affidavit accompanying notice of intent; contents of affidavit and notice of intent.
   - (3) Investigation by Commission; prerequisites; effect; scope; procedures.
   - (4) Issuance of certificate; contents; taking effect of abandonment or discontinuance.
   - (5) Diagram of transportation system directly or indirectly operated by carrier by railroad subject to this chapter; preparation, submission to Commission, and publication; contents; amendments; opposition to issuance or denial of certificate limited by diagram or amended diagram.

Sec.
(6) Findings by Commission of public convenience and necessity permitting abandonment or discontinuance; publication in Federal Register; further findings of offers of financial assistance postponing issuance of certificate of abandonment or discontinuance; duration of postponement.
(7) Determination by Commission subsequent to findings of offers of financial assistance of extent avoidable costs of rail service and reasonable return on rail properties exceed operating revenues.
(8) Statutory provisions applicable to petitions filed and pending prior to February 5, 1976, or prior to promulgation of regulations by Commission.
(9) Injunctive relief; jurisdiction; parties; civil penalty.
(10) Further findings by Commission of suitability of abandoned or discontinued properties for use for other public purposes; limitations on disposal subsequent to finding.
(11) Definitions.
2. Special rates and rebates prohibited.
3. Preferences; interchange of traffic; terminal facilities.
(1) Undue preferences or prejudices prohibited.
(1a) Export rates on farm commodities; Commission's power to carry out policy.
(2) Payment of freight as prerequisite to delivery.
(3) Liability of shipper-consignee for freight where delivery is made to another party upon instruction.
(4) Interchange of traffic.
(5) Terminal facilities; use of and compensation for.
4. Long and short haul charges; competition with water routes.
(1) Charges for long and short hauls and on through route; exemption.
(2) Competition of railroads with water routes; change of rates.
5. Combinations and consolidations of carriers.
(1) Pooling; division of traffic, service, or earnings.
(2) Unifications, mergers, and acquisitions of control; procedures applicable.
(3) Expedited merger, consolidation, etc., procedure; applicability; prerequisites.
(4) Noncarrier deemed carrier upon acquiring control.
(5) Control effected by other than prescribed methods.
(6) Transactions deemed to effectuate control or management.
(7) Affiliation with a carrier defined.
(8) Investigation by Commission of effectuation of control by nonprescribed methods.
(9) Jurisdiction of injunctions, etc., against violations of section or orders.
(10) Supplemental orders by Commission.
(11) Unifications, consolidations, etc., of motor carriers only.
(12) Plenary nature of authority under section.
(13) Separability clause.
(14) Carrier defined.
(15) Interest in competing water carrier; prohibition.
(16) Determination of fact of competition.
Sec.
(17) Permission of interest in competing water carrier.
5a. Combinations and consolidations existing prior to June 16, 1933.
5b. Agreements between common carriers other than common carriers by railroad generally.
(1) Definition of "carrier" and "antitrust laws".
(2) Application to Commission for approval of agreements; rules and regulations.
(3) Maintenance of accounts and records by conferences, bureaus, committees, etc.
(4) Agreements between carriers of different classes.
(5) Pooling or division agreements.
(6) Agreements for determining matters through joint consideration.
(7) Investigation of prior approved agreements; termination or modification of approval; effective date.
(8) Hearings.
(9) Relief from operation of antitrust laws.
(10) Effect of Commission's action.
5c. Agreements between common carriers by railroad subject to this chapter.
(1) Definitions.
(2) Application to Commission for approval of agreements; rules and regulations; criteria.
(3) Maintenance of accounts and records by conferences, bureaus, committees, etc.; investigative and reporting powers of Commission.
(4) Pooling or division agreements.
(5) Agreements for determining matters through joint consideration; limitations.
(6) Investigation of prior approved agreements; termination or modification of approval; effective date; review of approval; report to President and Congress; termination or suspension of approval.
(7) Hearings.
(8) Relief from operation of antitrust laws.
(9) Applicability of Commission's action.
(10) Periodic assessment and report by Federal Trade Commission to Commission regarding agreements, etc.; consultations; availability of report.
(11) Time for final disposition of rule, rate or charge docketed with conferences, bureaus, committees, etc.
6. Schedules and statements of rates, etc., joint rail and water transportation.
(1) Schedule of rates, fares, and charges; filing and posting.
(2) Schedule of rates through foreign country.
(3) Change in rates, fares, etc.; notice required; simplification of schedules.
(4) Joint tariffs.
(5) Copies of traffic contracts to be filed.
(6) Form and manner of publishing, filing, and posting schedules; incorporation of rates into individual tariffs; time for incorporation; rejection of schedules; unlawful use.
(7) Transportation without filing and publishing rates forbidden; rebates; privileges.
(8) Preference to shipments for United States.
(9) Schedule lacking notice of effective date.
(10) Penalty for failure to comply with regulations.

Sec.
(11) Jurisdiction of Commission over transportation by rail and water.
(12) Jurisdiction of Commission over carriers contracting with water carriers operating to foreign ports.
7. Combinations to prevent continuous carriage of freight prohibited.
8. Liability in damages to persons injured by violation of law.
9. Remedies of persons damaged; election; witnesses.
10. Violation of regulations by carrier; discrimination; penalties.
(1) Violation by carrier or officer; penalty.
(2) False billing or classification by carrier; penalty.
(3) Obtaining lower rates by false billing, etc., or by false claim; penalty.
(4) Inducing unjust discrimination; penalty; liability for damages.
11. Interstate Commerce Commission; appointment, term, and qualifications of Commissioners.
12. Authority and duties of Commission; witnesses; depositions.
(1) Authority, duties, and proceedings of Commission; witnesses; exemption from applicability of chapter for persons, class of persons, etc.; procedures for establishment and revocation.
(2) Attendance of witnesses and production of documents.
(3) Compelling attendance and testimony of witnesses, etc.
(4) Depositions.
(5) Oath; subscription of testimony on deposition.
(6) Deposition in foreign country; filing of depositions.
(7) Fees for depositions.
13. Complaints to and investigations by Commission.
(1) Complaint to Commission of violation of law by carrier; reparation; investigation.
(2) Complaints by State Commissions; inquiry on Commission's own motion; expenses of State commissions.
(3) Investigation involving State regulations; conference of State and interstate commissions.
(4) Duty of Commission where State regulations result in discrimination.
(5) Exclusive authority to determine and prescribe intrastate rates; prerequisites; procedures.
(6) Petition for commencement of proceeding for issuance, amendment, or repeal of order, etc., relating to common carriers by railroads; grant or denial; judicial review; limitations; definition.
13a. Discontinuance or change of the operation or service of trains or ferries; notice; investigation; hearing; determination.
14. Reports and decisions of Commission.
(1) Reports of investigations by Commission.
(2) Record of reports; copies.
(3) Publication of reports and decisions; printing and distribution of annual reports.
15. Determination of rates, routes, etc.; routing of traffic; disclosures, etc.
(1) Commission empowered to determine and prescribe rates, classifications, etc.
(2) Orders of Commission.
(3) Establishment of through routes, joint classifications, joint rates, fares, etc.
(4) Through routes to embrace entire length of railroad; temporary through routes.
Sec.
(5) Transportation of livestock in carload lots; services included.
(6) Commission to establish just divisions of joint rates, fares, or charges; adjustments procedures applicable.
(7) Commission to determine lawfulness of new rates; suspension; refunds; nonapplicability to common carriers by railroad subject to chapter.
(8) Commission to determine lawfulness of new rates; applicability to common carrier by railroad; suspensions; accounts; hearing and basis of decision.
(9) Commission to investigate lawfulness of rates with respect to market dominance of common carrier by railroad; conclusiveness of findings; suspensions.
(10) Shipper's choice of route to be observed.
(11) Liability of carriers where property is delivered contrary to routing instructions.
(12) Direction of unrouted traffic by Commission.
(13) Disclosure or solicitation of information concerning shipments unlawful; exceptions.
(14) Penalty for violation of preceding provisions.
(15) Allowance for service or facilities furnished by shipper.
(16) Other powers of Commission not excluded.
(17) Standards and expeditious procedures for establishment of rates based on seasonal, regional, or peak-period demand for rail services; annual report.
(18) Expeditious procedures for separate rates for distinct rail services.
(19) Establishment of rate incentives for capital investment.
15a. Fair return for carriers.
(1) Definition of "rates".
(2) Ratemaking criteria; nonapplicability to common carriers by railroad subject to chapter.
(3) Competition between carriers of different modes of transportation; non-applicability to common carriers by railroad subject to chapter.
(4) Revenue levels of common carriers by railroad; standards and procedures for establishment.
(5) Consideration of allegations of change in rate relationships between commodities, ports, etc., and effect on competitive position of shippers or consignees by proposed rate increase or decrease.
(6) Adjustment of interstate rates.
15b. Collection of excess income discontinued; general railroad contingent fund liquidated; distribution of moneys; computation of tax liabilities.
16. Orders of Commission and enforcement thereof.
(1) Award of damages.
(2) Proceedings in courts to enforce orders; costs; attorney's fee.
(3) Limitation of actions.
(4) Joinder of parties; process; judgment.
(5) Service of order of Commission and notices of proceedings.
(6) Suspension or modification of orders.
(7) Compliance with orders.
(8) Failure of carrier or officer to obey orders; penalty.
(9) Suit for recovery of forfeiture.
(10) United States attorneys to prosecute for forfeitures; costs and expenses.

Sec.
(11) Employment of attorneys by Commission.
(12) Proceedings to enforce orders other than for payment of money.
(13) Copies of schedules, tariffs, contracts, etc., kept as public records; evidence.
16a. Repealed.
17. Commission procedure; delegation of duties; rehearings.
(1) Divisions of Commission; organization; composition.
(2) Reference of matters to divisions, individual Commissioners or boards.
(3) Conduct of proceedings; seal; oaths; quorum; rules.
(4) Powers of divisions, boards, etc.; effect of orders, etc.
(5) Findings, etc., of Commissioner or board; accompanying statement and recommended order; copies to parties; exceptions; recommended order as Commission's order; delegation of duties to employee boards.
(6) Rehearing, reargument, or reconsideration of decisions, orders, and requirements.
(7) Reversal or modification after rehearing, etc.
(8) Stay of decisions, etc., not effective at time of application for rehearing, etc.
(9) Administrative hearing and review procedures for decisions, orders, reports, etc.; judicial relief; applicability.
(10) Judicial relief from decisions, etc., upon denial or other disposition of application for rehearing, etc.
(11) Reference of administrative matters to examiners.
(12) Intervention of representatives of employees.
(13) Admission to practice before Commission.
(14) Formal investigative proceedings; conclusion or termination requirements.
(15) Access to information by Congressional committees; procedures; limitations; definition.
18. Employees; appointment and compensation; witness fees; expenses.
(1) Commissioners' salaries; secretary and employees; compensation; witness fees.
(2) Expenses of Commission.
19. Office and sessions.
19a. Valuation of property of carriers.
(a) Physical valuation of property of carriers; classification and inventory.
(b) Cost of property; elements considered in determination; gifts, grants, etc.
(c) Investigation; procedure and forms.
(d) Time for beginning investigation; reports to Congress.
(e) Aid of carrier required; rules and regulations; inspection of records.
(f) Valuation of extensions and improvements; revisions; reports.
(g) Reports and information to be furnished by carriers.
(h) Notice of completion of tentative valuation; protests; finality of report.
(i) Protests; hearings; changes in valuations; final valuation and classification.
(j) Effect of evidence as to values; modification of orders.
(k) Receivers and trustees of carriers affected; noncompliance with law; penalty.
(l) Mandamus to compel compliance with law.

Sec.
20. Reports, records, and accounts of carriers; mandamus; liability of initial carrier for loss, etc.
(1) Reports from carriers and lessors.
(2) Period covered by and time for making reports; oaths for reports.
(3) Uniform cost and revenue accounting and reporting system for all common carriers by railroad subject to this chapter; promulgation of regulations and procedures; effective date; criteria; review and revision of system; authorization of appropriations.
(4) Depreciation charges.
(5) Forms of accounts, records, and memoranda; access to records, etc., by Commission or agents.
(6) Persons furnishing cars or protection against elements; access to and forms of records, etc.; reports.
(7) Penalties and forfeitures in connection with accounts, records, reports, etc.
(8) Definitions.
(9) Jurisdiction to compel compliance by mandamus.
(10) Special agents or examiners.
(11) Liability of initial and delivering carrier for loss; limitation of liability; notice and filing of claim.
(12) Recovery by initial or delivering carrier from connecting carrier.
20a. Securities of carriers; issuance, etc.
(1) Carrier defined.
(2) Issuance of securities; assumption of obligations; authorization.
(3) Scope of Commission's authority.
(4) Form and contents of application; oath and signature.
(5) Disposition of securities described in application, etc.
(6) Notice of application to governors of States; intervention; hearings.
(7) Jurisdiction of Commission as exclusive and plenary.
(8) Guaranty of securities.
(9) Issue of short term notes; certificate of notification; proviso.
(10) Reports by carriers as to securities or proceeds.
(11) Securities issued contrary to law void; effect; penalty.
(12) Restrictions on actions of officers and directors; penalty.
20b. Modification of railroad financial structures.
(1) Approval and authorization of Commission; exclusion of equipment-trust securities.
(2) Application; public hearing; findings; submission of plan to security holders; order of Commission; force and effect.
(3) When class of securities affected; what constitutes outstanding securities; assent to modification.
(4) Modification of securities of carrier acting as guarantor, endorser, surety, or otherwise; person deemed carrier.
(5) Authority of section as exclusive and plenary.
(6) Reports to Commission from carrier.
(7) Section as permissive.
(8) Law governing applications; supplemental orders.
(9) Solicitation of proxies.
(10) Rules and regulations.
(11) Issuance of securities; law governing.
(12) Taxes on issuance, transfer, or exchange of securities.

Sec.
(13) Conditions permitting modification and adjustment procedure to carriers in receivership or reorganization proceedings.
20c. Recordation of railroad equipment trust agreements and other evidences of equipment indebtedness.
21. Annual reports of Commission.
22. Restrictions; quotations of rates for United States Government.
23. Mandamus to obtain equal facilities for shippers.
25. Repealed.
26. Safety appliances, methods, and systems.
(a) Definition of carrier.
(b) Order to install systems, etc.; modification; negligence of carrier.
(c) Filing report on rules, standards, and instructions; time; modification.
(d) Inspection by Secretary of Transportation; personnel.
(e) Unlawful use of system, etc.
(f) Report of failure of system, etc., and accidents.
(g) Duties and powers of Secretary of Transportation.
(h) Penalties; enforcement.
26a. State or subdivision income tax withholding on compensation paid to interstate railroad, express company, or sleeping car company employees.
(a) Withholding where employee earns more than 50 per centum of compensation paid by carrier to him or where employee resides; filing of information return by carrier.
(b) State or subdivision where employee deemed to have earned more than 50 per centum of compensation.
(c) Definitions.
26b. Office of Rail Public Counsel.
(1) Establishment; statutory provisions applicable.
(2) Director; appointment; term of office; responsibilities; compensation.
(3) Powers and duties of Director.
(4) Additional duties and responsibilities of Office.
(5) Concurrent submission of budget requests and estimates to President and Congress.
(6) Authorization of appropriations.
26c. Discriminatory taxation by States, political subdivisions, or governmental entities or persons acting on behalf of States or subdivisions.
(1) Particular acts unlawful.
(2) Judicial relief; limitations.
(3) Definitions.
27. Short title.

Short Title of Interstate Commerce Act

Act Sept. 18, 1940, ch. 722, title I, § 1, 54 Stat. 899, amended the Interstate Commerce Act by inserting before Part I thereof (chapter 1 of this title) the following provision entitled "Short Title": "This Act [chapters 1, 8, 12, 13, and 19 of this title] may be cited as the Interstate Commerce Act."

Interstate Commerce Act

The Interstate Commerce Act of Feb. 4, 1887, ch. 104, 24 Stat. 379, as it existed prior to its division into parts, is embodied in chapter 1 (§ 1 et seq.) of this title. The original act was designated "part I" and a new part II, comprising chapter 8 (§ 301 et seq.) of this title, was added by act Aug. 9, 1935, ch. 498, 49 Stat. 543. Part III, constituting chapter 12 (§ 901 et seq.) of this title, was added by act Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 929. Part IV, constituting chapter 13 (§ 1001 et seq.) of this title, was added by act May 16, 1942, ch. 318, § 1, 56 Stat. 284. Part V, constituting chapter 19 (§ 1231 et seq.) of this title, was added by Pub. L. 85-625, § 2, Aug. 12, 1958, 72 Stat. 568.

National Transportation Policy

Act Sept. 18, 1940, ch. 722, title I, § 1, 54 Stat. 899, amended the Interstate Commerce Act, chapters 1, 8, 12, 13 and 19 (§§ 1 et seq., 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title, by inserting before part I thereof (chapter 1 of this title) the following provision entitled "National Transportation Policy:"

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this act (chapters 1, 8, 12, 13, and 19 of this title), so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this act (chapters 1, 8, 12, 13, and 19 of this title), shall be administered and enforced with a view to carrying out the above declaration of policy."

Investigation of Various Modes of Transportation

Act Sept. 18, 1940, ch. 722, title III, pt. I, §§ 301 to 306, 54 Stat. 952 to 954, which established a Board of Investigation and Research to conduct certain investigations in connection with national transportation problems, was extended to Sept. 18, 1944, by 1942 Proc. No. 2559, eff. June 26, 1942, 7 F.R. 4809, and subsequently terminated.

Repeals

The provisions of this chapter, insofar as they related to communication by wire or wireless, or to telegraph, telephone, or cable companies operating by wire or wireless, except the last proviso of section 1(5) and the provisions of section 1(7), were repealed by act June 19, 1934, ch. 652, § 602(b), 48 Stat. 1102. See section 151 et seq. of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

Cross References

Appeals to Supreme Court, see section 45 of this title.

Expedition of actions by United States under this chapter involving general public importance, see section 44 of this title.

Rate making policy, see section 55 of this title.

Interstate Commerce Act Referred to in Other Sections

The Interstate Commerce Act is referred to in sections 20, 41, 43, 53, 55, 920, 1382, 1483, 1653, 1655 of this title; title 7 sections 225, 2044; title 11 section 205; title 15 sections 19, 21, 26, 44, 1681s, 1691c; title 16 section 813; title 18 sections 831, 835; title 42 sections 4916, 4917; title 43 section 975; title 45 sections 22, 65, 151, 157, 744, 791, 793, 854; title 46 section 884; title 47 section 601; title 48 section 751.

Interstate Commerce Act Referred to in D.C. Code

The Interstate Commerce Act is referred to in sections 7-1223, 47-1520, 47-1580b of the District of Columbia Code.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 50, 302, 303, 305, 319, 902, 903, 905, 906, 1002, 1004, 1008, 1010, 1011, 1013, 1017, 1654 of this title; title 18 section 835; title 26 sections 48, 281, 7701; title 29 section 213; title 33 sections 1507, 1512; title 45 sections 231, 351, 546, 581, 661, 715, 771.

§ 1. Regulation in general; car service; alteration of line

(1) Carriers subject to regulation

The provisions of this chapter shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; or

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water—

(c) Repealed. June 19, 1934, ch. 652, title VI, § 602(b), 48 Stat. 1102.

From one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only insofar as such transportation takes place within the United States.

(2) Transportation subject to regulation

The provisions of this chapter shall also apply to such transportation of passengers and property, but only insofar as such transportation takes place within the United States, but shall not apply—

(a) To the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State and not shipped to or from a foreign country from or to any place in the United States as aforesaid, except as otherwise provided in this chapter;

(b) Repealed. June 19, 1934, ch. 652, title VI, § 602(b), 48 Stat. 1102.

(c) To the transportation of passengers or property by a carrier by water where such transportation would not be subject to the provisions of this chapter except for the fact that such carrier absorbs, out of its port-to-port water rates or out of its proportional through rates, any switching, terminal, lighterage, car rental, trackage, handling, or other charges by a rail carrier for services within the switching, drayage, lighterage, or corporate limits of a port terminal or district.

(3) Definitions

(a) The term "common carrier" as used in this chapter shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire. Wherever the word "carrier" is used in this chapter it shall be held to mean "common carrier." The term "railroad" as used in this chapter shall include all bridges, car floats, lighters, and ferries used by or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property. The term "transportation" as used in this chapter shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported. The term "person" as used in this chapter includes an individual, firm, copartnership, corporation, company, association, or joint-stock association; and includes a trustee, receiver, assignee, or personal representative thereof.

(b) For the purposes of sections 5, 12(1), 20, 304(a)(7), 310, 320, 904(b), 910, and 913 of this title, where reference is made to control (in referring to a relationship between any person or persons and another person or persons), such reference shall be construed to include actual as well as legal control, whether maintained or exercised through or by reason of the method of or circumstances surrounding organization or operation, through or by common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or through or by any other direct or indirect means; and to include the power to exercise control.

(4) Duty to furnish transportation and establish through routes; division of joint rates

It shall be the duty of every common carrier subject to this chapter to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto; and it shall be the duty of common carriers by railroad subject to this chapter to establish reasonable through routes with common carriers by water subject to chapter 12 of this title, and just and reasonable rates, fares, charges, and classifications applicable thereto. It shall be the duty of every such common carrier establishing through routes to provide reasonable facilities for operating such routes and to make reasonable rules and regulations with respect to their operation, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such participating carriers.

(5) Just and reasonable charges; applicability; criteria for determination

(a) All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connec-

tion therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful. The provisions of this subdivision shall not apply to common carriers by railroad subject to this chapter.

(b) Each rate for any service rendered or to be rendered in the transportation of persons or property by any common carrier by railroad subject to this chapter shall be just and reasonable. A rate that is unjust or unreasonable is prohibited and unlawful. No rate which contributes or which would contribute to the going concern value of such a carrier shall be found to be unjust or unreasonable, or not shown to be just and reasonable, on the ground that such rate is below a just or reasonable minimum for the service rendered or to be rendered. A rate which equals or exceeds the variable costs (as determined through formulas prescribed by the Commission) of providing a service shall be presumed, unless such presumption is rebutted by clear and convincing evidence, to contribute to the going concern value of the carrier or carriers proposing such rate (hereafter in this paragraph referred to as the "proponent carrier"). In determining variable costs, the Commission shall, at the request of the carrier proposing the rate, determine only those costs of the carrier proposing the rate and only those costs of the specific service in question, except where such specific data and cost information is not available. The Commission shall not include in variable cost any expenses which do not vary directly with the level of service provided under the rate in question. Notwithstanding any other provision of this chapter, no rate shall be found to be unjust or unreasonable, or not shown to be just and reasonable, on the ground that such rate exceeds a just or reasonable maximum for the service rendered or to be rendered, unless the Commission has first found that the proponent carrier has market dominance over such service. A finding that a carrier has market dominance over a service shall not create a presumption that the rate or rates for such service exceed a just and reasonable maximum. Nothing in this paragraph shall prohibit a rate increase from a level which reduces the going concern value of the proponent carrier to a level which contributes to such going concern value and is otherwise just and reasonable. For the purposes of the preceding sentence, a rate increase which does not raise a rate above the incremental costs (as determined through formulas prescribed by the Commission) of rendering the service to which such rate applies shall be presumed to be just and reasonable.

(c) As used in this chapter, the terms—

(i) "market dominance" refers to an absence of effective competition from other carriers or modes of transportation, for the traffic or movement to which a rate applies; and

(ii) "rate" means any rate or charge for the transportation of persons or property.

(d) Within 240 days after February 5, 1976, the Commission shall establish, by rule, standards and procedures for determining, in accordance with section 15(9) of this title, whether and when a carrier possesses market dominance over a service rendered or to be rendered at a particular rate or rates. Such rules shall be designed to provide for a practical determination without administrative delay. The Commission shall solicit and consider the recommendations of the Attorney General and of the Federal Trade Commission in the course of establishing such rules.

(5½) Exchange of services

Nothing in this Act shall be construed to prevent any common carrier subject to this Act from entering into or operating under any contract with any telephone, telegraph, or cable company, for the exchange of their services.

(6) Classification of property for transportation; regulations and practices; demurrage charges

It is made the duty of all common carriers subject to the provisions of this chapter to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this chapter which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this chapter upon just and reasonable terms, and every unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful. Demurrage charges shall be computed, and rules and regulations relating to such charges shall be established, in such a manner as to fulfill the national needs with respect to (a) freight car utilization and distribution, and (b) maintenance of an adequate freight car supply available for transportation of property.

(7) Free transportation for passengers prohibited; exceptions; penalty

No common carrier subject to the provisions of this chapter, shall, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees, its officers, time inspectors, surgeons, physicians, and attorneys at law, and the families of any of the foregoing; to the executive officers, general chairmen, and counsel of employees' organizations when such organizations are authorized and designated to represent employees in accordance with the provisions of the Railway Labor Act [45 U.S.C. 151 et seq.]; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those

about to enter and those returning home after discharge; to necessary caretakers of livestock, poultry, milk, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to railway mail-service employees and persons in charge of the mails when on duty and traveling to and from duty, and all duly accredited agents and officers of the United States Postal Service and the Railway Mail Service and post-office inspectors while traveling on official business, upon the exhibition of their credentials; to customs inspectors, and immigration officers; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: *Provided*, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: *And provided further*, That this provision shall not be construed to prohibit the privilege of passes or franks, or the exchange thereof with each other, for the officers, agents, employees, and their families of such telegraph, telephone, and cable lines, and the officers, agents, employees and their families of other common carriers subject to the provisions of this chapter: *Provided further*, That the term "employees" as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier and exemployees traveling for the purpose of entering the service of any such common carrier; and the term "families" as used in this paragraph shall include the families of those persons named in this proviso, also the families of persons killed, and the widows during widowhood and minor children during minority of persons who died, while in the service of any such common carrier. Any common carrier violating this provision shall be deemed guilty of a misdemeanor and for each offense, on conviction, shall pay to the United States a penalty of not less than $100 nor more than $2,000, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in sections 41 to 43 of this title.

(8) Transportation of commodity manufactured or produced by railroad forbidden

It shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

(9) Switch connections and tracks

Any common carrier subject to the provisions of this chapter, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper or owner of such lateral, branch line railroad, such shipper or owner of such lateral branch line of railroad, may make complaint to the Commission, as provided in section 13 of this title, and the Commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the Commission may make an order, as provided in section 15 of this title, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the Commission, other than orders for the payment of money.

(10) "Car service" defined

The term "car service" in this chapter shall include the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, and other vehicles used in the transportation of property, including special types of equipment, and the supply of trains, by any carrier by railroad subject to this chapter.

(11) Duty to furnish car service; rules and regulations

It shall be the duty of every carrier by railroad subject to this chapter to furnish safe and adequate car service and to establish, observe, and enforce just and reasonable rules, regulations, and practices with respect to car service; and every unjust and unreasonable rule, regulation, and practice with respect to car service is prohibited and declared to be unlawful.

(12) Distribution of coal cars; failure to prorate; penalty; applicability of unit-train and non-unit-train service; definition

It shall also be the duty of every carrier by railroad to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it, whether located upon its line or lines or customarily dependent upon it for car supply. During any period when the supply of cars available for such service does not equal the requirements of such mines it shall be the duty of the carrier to maintain and apply just and reasonable ratings of such mines and to count each and every car fur-

nished to or used by any such mine for transportation of coal against the mine. Failure or refusal so to do shall be unlawful, and in respect of each car not so counted shall be deemed a separate offense, and the carrier, receiver, or operating trustee so failing or refusing shall forfeit to the United States the sum of $100 for each offense, which may be recovered in a civil action brought by the United States. In applying the provisions of this paragraph, unit-train service and non-unit-train service shall be considered separate and distinct classes of service, and a distinction shall be made between these two classes of service and between the cars used in each class of service; questions of the justness and reasonableness of, or discrimination or preference or prejudice or advantage or disadvantage in, the distribution of cars shall be determined within each such class and not between them, notwithstanding any other provision of section 1, 2, or 3 of this title, and of section 41, 42, or 43 of this title. Coal cars supplied by shippers or receivers shall not be considered a part of such carrier's fleet or otherwise counted in determining questions of distribution or car count under this paragraph or any provision of law referred to in this section. As used in this paragraph, the term "unit-train service", means the movement of a single shipment of coal of not less than 4,500 tons, tendered to one carrier, on one bill of lading, at one origin, on one day, and destined to one consignee, at one plant, at one destination, via one route.

(13) Rules and regulations as to car service to be filed, etc.

The Commission is authorized by general or special orders to require all carriers by railroad subject to this chapter, or any of them, to file with it from time to time their rules and regulations with respect to car service, and the Commission may, in its discretion, direct that such rules and regulations shall be incorporated in their schedules showing rates, fares, and charges for transportation, and be subject to any or all of the provisions of this chapter relating thereto.

(14) Establishment by Commission of rules, etc., as to car service; procedures applicable

(a) It is the intent of the Congress to encourage the purchase, acquisition, and efficient utilization of freight cars. In order to carry out such intent, the Commission may, upon complaint of an interested party or upon its own initiative without complaint, and after notice and an opportunity for a hearing, establish reasonable rules, regulations, and practices with respect to car service by common carriers by railroad subject to this chapter, including (i) the compensation to be paid for the use of any locomotive, freight car, or other vehicle, (ii) the other terms of any contract, agreement, or arrangement for the use of any locomotive or other vehicle not owned by the carrier by which it is used (and whether or not owned by another carrier, shipper, or third party), and (iii) the penalties or other sanctions for nonobservance of such rules, regulations, or practices. In determining the rates of compensation to be paid for each type of freight car, the Commission shall give consideration to the transportation use of each type of freight car, to the national level of ownership of each such type of freight car, and to other factors affecting the adequacy of the national freight car supply. Such compensation shall be fixed on the basis of the elements of ownership expense involved in owning and maintaining each such type of freight car, including a fair return on the cost of such type of freight car (giving due consideration to current costs of capital, repairs, materials, parts, and labor). Such compensation may be increased by any incentive element which will, in the judgment of the Commission, provide just and reasonable compensation to freight car owners, contribute to sound car service practices (including efficient utilization and distribution of cars), and encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense. The Commission shall not make any incentive element applicable to any type of freight car if the Commission finds that the supply of such type of freight car is adequate. The Commission may exempt such incentive element from the compensation to be paid by any carrier or group of carriers if the Commission finds that such an exemption is in the national interest.

(b) It shall be unlawful for any common carrier by railroad or express company, subject to this chapter, to make or enter into any contract, agreement, or arrangement with any person for the furnishing to or on behalf of such carrier or express company of protective service against heat or cold to property transported or to be transported in interstate or foreign commerce, or for any such carrier or express company to continue after April 1, 1941, as a party to any such contract, agreement, or arrangement unless and until such contract, agreement, or arrangement has been submitted to and approved by the Commission as just, reasonable, and consistent with the public interest: *Provided*, That if the Commission is unable to make its determination with respect to any such contract, agreement, or arrangement prior to said date, it may extend it to not later than October 1, 1941.

(15) Powers of Commission in case of emergency

Whenever the Commission is of opinion that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in any section of the country, the Commission shall have, and it is given, authority, either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleading by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine: (a) to suspend the operation of any or all rules, regulations, or practices then established with respect to car service for such time as may be determined by the Commission; (b) to make such just and reasonable directions with respect to car service without regard to the ownership as between carriers of locomotives, cars, and other vehicles, during such emergency as in its opinion will best promote the service in the interest of the public and the commerce of the people, upon such terms of compensation as between the carriers as they may agree upon, or,

in the event of their disagreement, as the Commission may after subsequent hearing find to be just and reasonable; (c) to require such joint or common use of terminals, including main-line track or tracks for a reasonable distance outside of such terminals, as in its opinion will best meet the emergency and serve the public interest, and upon such terms as between the carriers as they may agree upon, or, in the event of their disagreement, as the Commission may after subsequent hearing find to be just and reasonable; and (d) to give directions for preference or priority in transportation, embargoes, or movement of traffic under permits, at such time and for such periods as it may determine, and to modify, change, suspend, or annul them. In time of war or threatened war the President may certify to the Commission that it is essential to the national defense and security that certain traffic shall have preference or priority in transportation, and the Commission shall, under the power herein conferred, direct that such preference or priority be afforded.

(16) Rerouting of traffic on failure of initial carrier to serve public

(a) Whenever the Commission is of opinion that any carrier by railroad subject to this chapter is for any reason unable to transport the traffic offered it so as properly to serve the public, it may, upon the same procedure as provided in paragraph (15) of this section, make such just and reasonable directions with respect to the handling, routing, and movement of the traffic of such carrier and its distribution over other lines of roads, as in the opinion of the Commission will best promote the service in the interest of the public and the commerce of the people, and upon such terms as between the carriers as they may agree upon, or, in the event of their disagreement, as the Commission may after subsequent hearing find to be just and reasonable.

(b) Whenever any carrier by railroad is unable to transport the traffic offered it because—

(1) its cash position makes its continuing operation impossible;

(2) it has been ordered to discontinue any service by a court; or

(3) it has abandoned service without obtaining a certificate from the Commission pursuant to this section;

the Commission may, upon the same procedure as provided in paragraph (15) of this section, make such just and reasonable directions with respect to the handling, routing, and movement of the traffic available to such carrier and its distribution over such carrier's lines, as in the opinion of the Commission will best promote the service in the interest of the public and the commerce of the people subject to the following conditions:

(A) Such direction shall be effective for no longer than 60 days unless extended by the Commission for cause shown for an additional designated period not to exceed 180 days.

(B) No such directions shall be issued that would cause a carrier to operate in violation of the Federal Railroad Safety Act of 1970 [45 U.S.C. 431 et seq.] or that would substantially impair the ability of the carrier so directed to serve adequately its own patrons or to meet its outstanding common carrier obligations.

(C) The directed carrier shall not, by reason of such Commission direction, be deemed to have assumed or to become responsible for the debts of the other carrier.

(D) The directed carrier shall hire employees of the other carrier to the extent such employees had previously performed the directed service for the other carrier, and, as to such employees as shall be so hired, the directed carrier shall be deemed to have assumed all existing employment obligations and practices of the other carrier relating thereto, including, but not limited to, agreements governing rate of pay, rules and working conditions, and all employee protective conditions commencing with and for the duration of the direction.

(E) Any order of the Commission entered pursuant to this paragraph shall provide that if, for the period of its effectiveness, the cost, as hereinafter defined, of handling, routing, and moving the traffic of another carrier over the other carrier's lines of road shall exceed the direct revenues therefor, then upon request, payment shall be made to the directed carrier, in the manner hereinafter provided and within 90 days after expiration of such order, of a sum equal to the amount by which such cost has exceeded said revenues. The term "cost" shall mean those expenditures made or incurred in or attributable to the operations as directed, including the rental or lease of necessary equipment, plus an appropriate allocation of common expenses, overheads, and a reasonable profit. Such cost shall be then currently recorded by the carrier or carriers in such manner and on such forms as by general order may be prescribed by the Commission and shall be submitted to and subject to audit by the Commission. The Commission shall certify promptly to the Secretary of the Treasury the amount of payment to be made to said carrier or carriers under the provisions of this paragraph. Payments required to be made to a carrier under the provisions of this paragraph shall be made by the Secretary of the Treasury from funds hereby authorized to be appropriated in such amounts as may be necessary for the purpose of carrying out the provisions hereof.

(17) Directions of Commission as to car service; disobedience; rights of States; bribery

(a) The directions of the Commission as to car service and to the matters referred to in paragraphs (15) and (16) of this section may be made through and by such agents or agencies as the Commission shall designate and appoint for that purpose. It shall be the duty of all carriers by railroad subject to this chapter, and of their officers, agents, and employees, to obey strictly and conform promptly to such orders or directions of the Commission, and in case of failure or refusal on the part of any carrier, receiver, or operating trustee to comply with any such order or direction such carrier, receiver, or trustee shall be liable to a penalty of not less than $100 nor more than $500 for each such offense and $50 for each and every day of the continuance of such offense, which shall accrue

to the United States and may be recovered in a civil action brought by the United States: *Provided, however,* That nothing in this chapter shall impair or affect the right of a State, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except insofar as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this chapter and except as otherwise provided in this chapter.

(b) It shall be unlawful for any person to offer or give or cause or procure to be offered or given, directly or indirectly, any money, property, or thing of value, or bribe in any other form whatsoever, to any person acting for or employed by any carrier by railroad subject to this part with intent to influence his decision or action, or because of his decision or action, with respect to the supply, distribution, or movement of cars or other vehicles, or vessels, used in the transportation of property. It shall be unlawful for any person acting for or employed by any carrier by railroad subject to this chapter to solicit, accept, or receive, directly or indirectly, any money, property, or thing of value, or bribe in any other form whatsoever, with intent to be influenced thereby in his decision or action, or because of his decision or action, with respect to the supply, distribution, or movement of cars or other vehicles, or vessels, used in the transportation of property. Any person who violates the provisions of this subparagraph shall be deemed guilty of a misdemeanor and be subject for each offense to a fine of not more than $1,000, or imprisonment in the penitentiary for a term of not more than two years, or both such fine and imprisonment.

(18) Extension or addition of lines; certificate required; procedures applicable to application for certificate; petition or initiative of Commission; agreements for ownership or use of spur, etc., tracks; limitations on authority of Commission; injunctions and penalty for violations

(a) No carrier by railroad subject to this chapter shall—

(i) undertake the extension of any of its lines of railroad or the construction of any additional line of railroad;

(ii) acquire or operate any such extension or any such additional line; or

(iii) engage in transportation over, or by means of, any such extended or additional line of railroad,

unless such extension or additional line of railroad is described in and covered by a certificate which is issued by the Commission and which declares that the present or future public convenience and necessity require or will be enhanced by the construction and operation of such extended or additional line of railroad. Upon receipt of an application for such a certificate, the Commission shall (A) send a copy of the application to the chief executive officer of each State that would be directly affected by the construction or operation of such extended or additional line, (B) send an accurate and understandable summary of such application to a newspaper of general circulation in such affected area or areas with a request that such information be made available to the general public, (C) cause a copy of such summary to be published in the Federal Register, (D) take such other steps as it deems reasonable and effective to publicize such application, and (E) indicate in such transmissions and publications that each interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

(b) The Commission shall establish, and may from time to time amend, rules and regulations (as to hearings and other matters) to govern applications for, and the issuance of, any certificate required by subdivision (a). An application for such a certificate shall be submitted to the Commission in such form and manner and with such documentation as the Commission shall prescribe. The Commission may—

(i) issue such a certificate in the form requested by the applicant;

(ii) issue such a certificate with modifications in such form and subject to such terms and conditions as are necessary in the public interest; or

(iii) refuse to issue such a certificate.

(c) Upon petition or upon its own initiative, the Commission may authorize any carrier by railroad subject to this chapter to extend any of its lines of railroad or to take any other action necessary for the provision of adequate, efficient, and safe facilities for the performance of such carrier's obligations under this chapter. No authorization shall be made unless the Commission finds that the expense thereof will not impair the ability of such carrier to perform its obligations to the public.

(d) Carriers by railroad subject to this chapter may, notwithstanding this paragraph and section 5 of this title, and without the approval of the Commission, enter into contracts, agreements, or other arrangements for the point[1] ownership or joint use of spur, industrial, team, switching, or side tracks. The authority granted to the Commission under this paragraph shall not extend to the construction, acquisition, or operation of spur, industrial, team, switching, or side tracks if such tracks are located or intended to be located entirely within one State, and shall not apply to any street, suburban, or interurban electric railway which is not operated as part of a general system of rail transportation.

(e) Any construction or operation which is contrary to any provision of this paragraph, of any regulations promulgated under this paragraph, or of any terms and conditions of an applicable certificate, may be enjoined by an appropriate district court of the United States in a civil action commenced and maintained by the United States, the Commission, or the attorney general or the transportation regulatory body of an affected State or area. Such a court may impose a civil penalty of not to exceed $5,000 on each person who knowingly authorizes, consents to, or permits any violation of this paragraph or of the conditions of a certificate issued under this paragraph.

(Feb. 4, 1887, ch. 104, pt. I, § 1, 24 Stat. 379; June 29, 1906, ch. 3591, § 1, 34 Stat. 584; Apr. 13,

[1] So in original. Probably should be "joint".

1908, ch. 143, 35 Stat. 60; June 18, 1910, ch. 309, § 7, 36 Stat. 544; May 29, 1917, ch. 23, 40 Stat. 101; Feb. 28, 1920, ch. 91, §§ 400–403, 41 Stat. 474–479; June 19, 1934, ch. 652, § 602(b), 48 Stat. 1102; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Sept. 18, 1940, ch. 722, title I, §§ 2, 3(a), (b), 4, 54 Stat. 899–901; June 24, 1948, ch. 622, 62 Stat. 602; Aug. 2, 1949, ch. 379, § 1, 63 Stat. 485; June 27, 1952, ch. 477, title IV, § 402(g), 66 Stat. 277; Aug. 12, 1958, Pub. L. 85–625, § 3, 72 Stat. 570; May 26, 1966, Pub. L. 89–430, § 1, 80 Stat. 168; Jan. 2, 1974, Pub. L. 93–236, title VI, § 601(e), 87 Stat. 1021; Feb. 5, 1976, Pub. L. 94–210, title II, §§ 202(a), (b), 211, 212(a), title III, § 310, title VIII, § 801, 90 Stat. 34, 35, 46, 60, 125.)

REFERENCES IN TEXT

This Act, referred to in par. (5½), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 1 et seq.) and chapters 8, 12, 13, and 19 (§§ 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

The Railway Labor Act, referred to in par. (7), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables volume.

The National Home for Disabled Volunteer Soldiers, referred to in par. (7), was dissolved by act July 3, 1930, ch. 863, §§ 1, 3, 5, 46 Stat. 1016, which provided for the consolidation of such home and its functions in the Veterans' Administration. The consolidation was effected by Ex. Ord. No. 5398, eff. July 21, 1930.

Federal Railroad Safety Act of 1970, referred to in par. 16(b), is Pub. L. 91–458, title II, Oct. 16, 1970, 84 Stat. 971, as amended, which is classified generally to subchapter II (§ 431 et seq.) of chapter 13 of Title 45, Railroads. For complete classification of this Act to the Code, see Short Title note set out under section 431 of Title 45 and Tables volume.

CODIFICATION

Par. (1) constituted the first paragraph of section 400 of act Feb. 28, 1920, which amended section 7 of the Commerce Court Act, act June 18, 1910. The latter act amended section 1 of act Feb. 4, 1887, known as the Interstate Commerce Act, as amended before 1910. The earlier acts in designating the carriers subject to regulation followed substantially the clause of this paragraph which related to telegraph companies. Under the paragraph in the present form common carriers by railroads, etc., generally are subjected to the provisions of this chapter, and par. (2) of this section contains exceptions as to intrastate transportation, etc.

Par. (2) constituted the second paragraph of section 400 of act Feb. 28, 1920, which amended section 7 of the Commerce Court Act, act June 18, 1910. This latter act amended section 1 of act Feb. 4, 1887, as amended before 1910. Subpar. (c) of this par. was added by act Feb. 28, 1920. Subpar. (a) is to the same effect as the proviso contained in act June 18, 1910.

Par. (3) constituted the third paragraph of section 400 of act Feb. 28, 1920, amending section 1 of act Feb. 4, 1887, as such paragraph appeared in section 7 of the Commerce Court Act, act June 18, 1910.

Par. (4) constituted the fourth paragraph of sectioon 400 of act Feb. 28, 1920, amending section 1 of act Feb. 4, 1887, as such paragraph appeared in section 7 of the Commerce Court Act, act June 18, 1910.

Par. (5) constituted the fifth paragraph of section 400 of act Feb. 28, 1920, amending section 1 of act Feb. 4, 1887, as such paragraph appeared in section 7 of the Commerce Court Act, act June 18, 1910.

Par. (6) was inserted in this section as originally enacted and subsequently amended, by act June 18, 1910. It constituted the fourth paragraph of such section and subsequently became paragraph "(6)" under the amendatory act of Feb. 28, 1920.

Par. (7). No provisions similar to those of the text were contained in this paragraph as originally enacted. They were added by a part of act June 29, 1906, amended by act Apr. 13, 1908, and again amended to read as given in the text by act June 18, 1910, constituting the fifth paragraph of such section. The paragraph was numbered paragraph "(7)" by the amendatory act of Feb. 28, 1920.

Par. (8). This paragraph, known as the "Commodities Clause," did not appear in act Feb. 4, 1887 known as the Interstate Commerce Act, as originally enacted, but was added by act June 29, 1906, and was repeated by the amending act of June 18, 1910. The paragraph which constituted the sixth paragraph of the earlier acts was numbered "(8)" by section 401 of act Feb. 28, 1920.

Par. (9) was not contained in act Feb. 4, 1887, known as the Interstate Commerce Act. It was first added by the amendatory act of June 29, 1906, and by the subsequent amendatory act of June 18, 1910, was made to read as set out in the text. The amendment in 1910 was to the last sentence and authorized the application, etc., to be made by the "owner of such lateral, branch line of railroad" in additional to the "shipper." The number "(9)" was given to the paragraph by act Feb. 28, 1920; theretofore it constituted the seventh paragraph of this section as amended by the act of 1910, and the sixth paragraph of this section as amended by the act of 1906.

Par. (10) was added to section 1 of act of 1887, known as the Interstate Commerce Act, by the amendatory act of May 29, 1917, and was amended to read as above by act Feb. 28, 1920, and given the number "(10)".

Par. (11) was added by act May 29, 1917 and was amended to read as above by act Feb. 28, 1920, and was given the number "(11)".

Par. (12) was not contained in act Feb. 4, 1887, known as the Interstate Commerce Act or the earlier amendatory acts, but was added by act Feb. 28, 1920, and given the number "(12)."

Par. (13) is not found originally in act Feb. 4, 1887, known as the Interstate Commerce Act or the earlier amendatory acts, but was added to section 1 by the act of May 29, 1917, and was amended to read as above by act Feb. 28, 1920, and given the number "(13)."

Par. (14) was not found originally in act Feb. 4, 1887, known as the Interstate Commerce Act or the earlier amendatory acts, but was added to section 1, by the amendatory act of May 29, 1917, and was amended by act Feb. 28, 1920, and given the number "(14)."

Par. (15) was not found originally in act Feb. 4, 1887, known as the Interstate Commerce Act or the earlier amendatory acts. It was added by the amendatory act of May 29, 1917, and was amended to read as above by act Feb. 28, 1920, and was given the number "(15)."

Par. (16) was not found originally in act Feb. 4, 1887, known as the Interstate Commerce Act or the earlier amendatory acts. It was added by act Feb. 28, 1920, and was given the number "(16)."

Par. (17) was not found originally in act Feb. 4, 1887, known as the Interstate Commerce Act or the earlier amendatory acts. The first part of this paragraph down to the proviso was added by the amendatory act of May 29, 1917, was amended by act Feb. 28, 1920, and was given the number "(17)."

Pars. (18) to (22) were not found originally in act Feb. 4, 1887, known as the Interstate Commerce Act nor in the earlier amendatory acts. They were added by act Feb. 28, 1920, and given the numbers "(18)" to "(22)."

AMENDMENTS

1976—Par. (5). Pub. L. 94–210, § 202(a), (b), designated existing provision as subd. (a), and, as so designated, added provision exempting from applicability of

this subd. common carriers by railroad subject to this chapter, and added subds. (b) to (d).

Par. (6). Pub. L. 94-210, § 211, added provision relating to demurrage charges.

Par. (12). Pub. L. 94-210, § 310, added provisions relating to application of par. with respect to unit-train service and non-unit-train service for purposes of determining distribution requirements.

Par. (14). Pub. L. 94-210, § 212(a), added provision relating to intent of Congress and expanded existing provisions relating to procedures applicable to establishment, contents, criteria, and exemptions from rules, etc., with respect to car service.

Par. (18). Pub. L. 94-210, § 801(a), designated existing provision as subd. (a) and, as so designated, substituted provisions relating to procedures applicable to Commission upon receipt of application for a certificate, for provisions relating to abandonment procedures applicable to carriers by railroad and contracts for joint use of spurs, switches, etc., and added subds. (b) to (e).

Par. (19). Pub. L. 94-210, § 801(b), struck out par. (19) relating to application and notice and hearing requirements for issuance of certificate by Commission.

Par. (20). Pub. L. 94-210, § 801(b), struck out par (20) setting forth provisions authorizing Commission to issue, deny, etc., certificate, and provisions relating to unlawful extension or abandonment of lines.

Par. (21). Pub. L. 94-210, § 801(b), struck out par. (21) relating to power of Commission to require adequate facilities or extension of line, and setting forth penalty for violation of orders.

Par. (22). Pub. L. 94-210, § 801(b), struck out par. (22) setting forth authority of Commission with respect to construction or abandonment of spur, etc., within one State.

1974—Par. (16). Pub. L. 93-236 designated existing provisions as subsec. (a) and added subsec. (b).

1966—Par. (14). Pub. L. 89-430 required that, in fixing the compensation to be paid for the use of any type of freight car, the Commission give consideration to the national level of ownership of the type of freight cars involved and other factors affecting the adequacy of the national freight car supply, and authorized the Commission to fix the compensation at a level so as to provide incentive elements that will encourage the acquisition and maintenance of a car supply adequate to meet the needs of commerce and the national defense in cases where the Commission finds the car supply to be inadequate.

1958—Par. (2). Pub. L. 85-625 inserted "except as otherwise provided in this chapter" following "aforesaid" in subpar. (a).

Par. (17). Pub. L. 85-625 inserted "and except as otherwise provided in this chapter" following "made under the provisions of this chapter" in subpar. (a).

1952—Par. (7). Act June 27, 1952, substituted "immigration officers" for "immigration inspectors".

1949—Par. (5). Act Aug. 2, 1949, struck out "(a)" and made subpar. (b) a separate paragraph numbered "(5½)".

1948—Par. (7). Act June 24, 1948, allowed free transportation to time inspectors and their families.

1940—Par. (3). Act Sept. 18, 1940, § 2(a), (b) designated existing provisions as subpar. (a), added last sentence thereto, and added subpar. (b).

Par. (4). Act Sept. 18, 1940, § 2(c), amended par. (4).

Par. (5). Act Sept. 18, 1940, § 2(d), designated existing provisions as subpar. (a), struck out the proviso thereto, and added subpar. (b).

Par. (7). Act Sept. 18, 1940, § 3(a), (b), amended par. (7).

Par. (14). Act Sept. 18, 1940, § 4(a), amended par. (14).

Par. (17). Act Sept. 18, 1940, § 4(b), designated existing provisions as subpar. (a) and added subpar. (b).

Par. (18). Act Sept. 18, 1940, § 4(c), added last sentence.

1935—Act Aug. 9, 1935, substituted "this part" for "this Act", meaning act Feb. 4, 1887 known as the Interstate Commerce Act which has been translated to read "this chapter".

1934—Par. (1). Act June 19, 1934, repealed subpar. (c) which related to communications by wire or wireless and deleted words "or transmission" following "such transportation" in text following subpar. (c).

Pars. (3), (5). Act June 19, 1934, struck out provisions relating to wire or wireless communication. See now section 151 et seq. of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

Change of Name

The Post Office Department, referred to in par. (7), and Postal Service have been redesignated to the United States Postal Service pursuant to Pub. L. 91-375, § 6(c), Aug. 12, 1970, 84 Stat. 733, set out as a note preceding section 101 of Title 39, Postal Service.

Effective Date of 1966 Amendment

Section 2 of Pub. L. 89-430 provided that: "Any compensation fixed pursuant to the amendment made to the Interstate Commerce Act by the first section of this Act [amending par. (14) of this section] shall not take effect before September 1, 1966."

Application of Ratemaking Amendments of Pub. L. 94-210 to Existing Provisions

Section 202(f) of Pub. L. 94-210 provided:

"(f) Nothing in the amendments made by this section [amending this section and section 15 of this title] shall be construed—

"(1) to modify the application of section 2, 3, or 4 of the Interstate Commerce Act (49 U.S.C. 2, 3, or 4) in determining the lawfulness of any rate or practice;

"(2) to make lawful any competitive practice which is unfair, destructive, predatory, or otherwise undermines competition which is necessary in the public interest;

"(3) to affect the existing law or the authority of the Commission with respect to rate relationships between ports; or

"(4) to affect the authority and responsibility of the Commission to guarantee the equalization of rates within the same port."

Studies of Effect of Ratemaking Amendments of Pub. L. 94-210 on Development of Stable Railway System of United States; Contents; Data; Transmittal to Congress.

Section 202(g) of Pub. L. 94-210 provided that: "The Secretary and the Commission shall separately study the effect of the amendments made by this section [amending this section and section 15 of this title] on the development of an efficient and financially stable railway system in the United States. Such studies shall include (1) an analysis of the effect of such provisions upon shippers and upon carriers in all modes of transportation, and (2) proposals for further regulatory and legislative changes, if necessary. The Commission shall gather all data relating to such studies as requested by the Secretary, and shall make such data available to the Secretary. The Secretary and the Commission shall transmit the results of their respective studies to each House of Congress within 20 months after the date of the enactment of this Act [Feb. 5, 1976]."

Revision of Car Service Rules, Regulations, and Practices by Commission

Section 212(b) of Pub. L. 94-210 provided that: "The Commission shall, within 18 months after the date of enactment of this Act [Feb. 5, 1976], revise its rules, regulations, and practices with respect to car service, in accordance with the amendment made by subsection (a) of this section [amending par. (14)(a) of this section]."

Interstate Commerce Act; Modernization, Revision, and Codification

Section 312 of Pub. L. 94-210 provided that: "The Commission shall prepare, or shall cause to be pre-

pared, in whole or in part by consultants, a proposed modernization and revision of the Interstate Commerce Act [this chapter and chapters 8, 12, 13, and 19 of this title], and a proposed codification of all Acts supplementary to the Interstate Commerce Act. The Commission shall submit the final draft thereof to the Congress within 2 years after the date of enactment of this Act [Feb. 5, 1976]. The final draft shall include comments on each proposed provision, significant alternative provisions considered but not recommended, and such other information as may be useful to the Congress. The final draft shall be designed to simplify the present law and to harmonize regulation among the several modes of transportation subject to regulation under the Interstate Commerce Act."

CONTINUATION OF PROVISIONS OF PARAGRAPH (15) UNTIL TERMINATION OF DECEMBER 16, 1950, NATIONAL EMERGENCY AND SIX MONTHS

Act June 30, 1953, ch. 165, 67 Stat. 115, provided: "That the provisions of section 1(15) of the Interstate Commerce Act, as amended [par. (15) of this section], as continued in effect by section 1(a)(25) of the Emergency Powers Continuation Act (Public Law 450, Eighty-second Congress) [act July 3, 1952, ch. 570, 66 Stat. 331] and the authorizations conferred and liabilities imposed thereby, shall remain in full force and effect until six months after the termination of the national emergency proclaimed by the President on December 16, 1950, (Proc. 2914, 3 C.F.R., 1950 Supp., p. 71 [Proc. No. 2914, eff. Dec. 16, 1950, 15 F.R. 9029, 64 Stat. 454, set out preceding section 1 of Appendix to Title 50 War and National Defense]), or until such earlier date as the Congress by concurrent resolution declares that it is no longer necessary to exercise the powers continued in force and effect by this Act, notwithstanding any limitation, by reference to war or threatened war, of the time during or for which the authorizations or liabilities thereunder may be exercised or imposed."

PRIOR CONTINUATIONS

Provisions of par. (15) of this section were previously extended to July 1, 1953, by act July 3, 1952, ch. 570, § 1(a)(25), 66 Stat. 332, as amended by act Mar. 31, 1953, ch. 13, 67 Stat. 18.

REPEAL OF PRIOR ACTS CONTINUING PARAGRAPH (15)

Section 6 of act July 3, 1952, repealed act Apr. 14, 1952, ch. 204, 66 Stat. 54, as amended by acts May 28, 1952, ch. 339, 66 Stat. 96; June 14, 1952, ch. 437, 66 Stat. 137; June 30, 1952, ch. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal shall take effect as of June 16, 1952, by section 7 of act July 3, 1952.

CROSS REFERENCES

Motor vehicle common carriers, application of par. (7) to, see section 317 of this title.

Natural Gas Act, see section 717 et seq. of Title 15, Commerce and Trade.

Rates on Government traffic, see section 65 of this title.

Special exception to operation of par. (7) prohibiting free transportation, see section 53 of this title.

Transportation at reduced rates, see section 22 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1a, 2, 3, 5, 5c, 6, 15, 65, 317, 906, 1020, 1655 of this title; title 11 section 205; title 26 section 250; title 45 sections 502, 544, 546, 702, 741, 744, 802.

§ 1a. Abandonment and discontinuance of rail service

(1) Authorization pursuant to certification by Commission; application and notice of intent required in accordance with rules and regulations; statutory provisions applicable; limitation on authority of Commission

No carrier by railroad subject to this chapter shall abandon all or any portion of any of its lines of railroad (hereafter in this section referred to as "abandonment") and no such carrier shall discontinue the operation of all rail service over all or any portion of any such line (hereinafter referred to as "discontinuance"), unless such abandonment or discontinuance is described in and covered by a certificate which is issued by the Commission and which declares that the present or future public convenience and necessity require or permit such abandonment or discontinuance. An application for such a certificate shall be submitted to the Commission, together with a notice of intent to abandon or discontinue, not less than 60 days prior to the proposed effective date of such abandonment or discontinuance, and shall be in accordance with such rules and regulations as to form, manner, content, and documentation as the Commission may from time to time prescribe. Abandonments and discontinuances shall be governed by the provisions of this section or by the provisions of any other applicable Federal statute, notwithstanding any inconsistent or contrary provision in any State law or constitution, or any decision, order, or procedure of any State administrative or judicial body. The authority granted to the Commission under this section shall not apply to (a) abandonment or discontinuance with respect to spur, industrial, team switching, or side tracks if such tracks are located entirely within one State, or (b) any street, suburban, or interurban electric railway which is not operated as part of a general system of rail transportation.

(2) Affidavit accompanying notice of intent; contents of affidavit and notice of intent

(a) Whenever a carrier submits to the Commission a notice of intent to abandon or discontinue, pursuant to paragraph (1) of this section, such carrier shall attach thereto an affidavit certifying that a copy of such notice (i) has been sent by certified mail to the chief executive officer of each State that would be directly affected by such abandonment or discontinuance, (ii) has been posted in each terminal and station on any line of railroad proposed to be so abandoned or discontinued, (iii) has been published for 3 consecutive weeks in a newspaper of general circulation in each county in which all or any part of such line of railroad is located, and (iv) has been mailed, to the extent practicable, to all shippers who have made significant use (as determined by the Commission in its discretion) of such line of railroad during the 12 months preceding such submission.

(b) The notice required under subdivision (a) of this paragraph shall include (i) an accurate and understandable summary of the carrier's application for a certificate of abandonment or discontinuance, together with the reasons therefor, and (ii) a statement indicating that each interested person is entitled to recommend to the Commission that it approve, disapprove,

or take any other specified action with respect to such application.

(3) Investigation by Commission; prerequisites; effect; scope; procedures

During the 60-day period between the submission of a completed application for a certificate of abandonment or discontinuance pursuant to paragraph (1) of this section and the proposed effective date of an abandonment or discontinuance, the Commission shall, upon petition, or may, upon its own initiative, cause an investigation to be conducted to assist it in determining what disposition to make of such application. An order to the Commission to implement the preceding sentence must be issued and served upon any affected carrier not less than 5 days prior to the end of such 60-day period. If no such investigation is ordered, the Commission shall issue such a certificate, in accordance with this section, at the end of such 60-day period. If such an investigation is ordered, the Commission shall order a postponement, in whole or in part, in the proposed effective date of the abandonment or discontinuance. Such postponement shall be for such reasonable period of time as is necessary to complete such investigation. Such an investigation may include, but need not be limited to, public hearings at any location reasonably adjacent to the line of railroad involved in the abandonment or discontinuance application, pursuant to rules and regulations of the Commission. Such a hearing may be held upon the request of any interested party or upon the Commission's own initiative. The burden of proof as to public convenience and necessity shall be upon the applicant for a certificate of abandonment or discontinuance.

(4) Issuance of certificate; contents; taking effect of abandonment or discontinuance

The Commission shall, upon an order with respect to each application for a certificate of abandonment or discontinuance—

(a) issue such certificate in the form requested by the applicant if it finds that such abandonment or discontinuance is consistent with the public convenience and necessity. In determining whether the proposed abandonment is consistent with the public convenience and necessity, the Commission shall consider whether there will be a serious adverse impact on rural and community development by such abandonment or discontinuance;

(b) issue such certificate with modifications in such form and subject to such terms and conditions as are required, in the judgment of the Commission, by the public convenience and necessity; or

(c) refuse to issue such certificate.

Each such certificate which is issued by the Commission shall contain provisions for the protection of the interests of employees. Such provisions shall be at least as beneficial to such interests as provisions established pursuant to section 5(2)(f) of this title and pursuant to section 565 of title 45. If such certificate is issued without an investigation pursuant to paragraph (3) of this section, actual abandonment or discontinuance may take effect, in accordance with such certificate, 30 days after the date of issuance thereof. If such a certificate is issued after an investigation pursuant to such paragraph (3), actual abandonment or discontinuance may take effect, in accordance with such certificate, 120 days after the date of issuance thereof.

(5) Diagram of transportation system directly or indirectly operated by carrier by railroad subject to this chapter; preparation, submission to Commission, and publication; contents; amendments; opposition to issuance or denial of certificate limited by diagram or amended diagram

(a) Each carrier by railroad subject to this chapter shall, within 180 days after the date of promulgation of regulations by the Commission pursuant to this section, prepare, submit to the Commission, and publish, a full and complete diagram of the transportation system operated, directly or indirectly, by such carrier. Each such diagram which shall include a detailed description of each line of railroad which is "potentially subject to abandonment", as such term is defined by the Commission. Such term shall be defined by the Commission by rules and such rules may include standards which vary by region of the Nation and by railroad or group of railroads. Each such diagram shall also identify any line of railroad as to which such carrier plans to submit an application for a certificate of abandonment or discontinuance in accordance with this section. Each such carrier shall submit to the Commission and publish, in accordance with regulations of the Commission, such amendments to such diagram as are necessary to maintain the accuracy of such diagram.

(b) The Commission shall not issue a certificate of abandonment or discontinuance with respect to a line of railroad if such abandonment or discontinuance is opposed by—

(i) a shipper or any other person who has made significant use (as determined by the Commission in its discretion) of such line of railroad during the 12-month period preceding the submission of an applicable application under paragraph (1) of this section; or

(ii) a State, or any political subdivision of a State, if such line of railroad is located, in whole or in part, within such State or political subdivision;

unless such line or railroad has been identified and described in a diagram or in an amended diagram which was submitted to the Commission under subdivision (a) of this paragraph at least 4 months prior to the date of submission of an application for such certificate.

(6) Findings by Commission of public convenience and necessity permitting abandonment or discontinuance; publication in Federal Register; further findings of offers of financial assistance postponing issuance of certificate of abandonment or discontinuance; duration of postponement

(a) Whenever the Commission makes a finding, in accordance with this section, that the public convenience and necessity permit the abandonment or discontinuance of a line or railroad, it shall cause such finding to be published in the Federal Register. If, within 30 days of such publication, the Commission further finds that—

(i) a financially responsible person (including a government entity) has offered finan-

cial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(ii) it is likely that such proffered assistance would—

(A) cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line; or

(B) cover the acquisition cost of all or any portion of such line of railroad;

the Commission shall postpone the issuance of a certificate of abandonment or discontinuance for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment or discontinuance, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect.

(b) A carrier by railroad subject to this chapter shall promptly make available, to any party considering offering financial assistance in accordance with subdivision (a) of this paragraph, its most recent reports on the physical condition of any line of railroad with respect to which it seeks a certificate of abandonment or discontinuance, together with such traffic, revenue, and other data as is necessary to determine the amount of assistance that would be required to continue rail service.

(7) Determination by Commission subsequent to findings of offers of financial assistance of extent avoidable costs of rail service and reasonable return on rail properties exceed operating revenues

Whenever the Commission finds, under paragraph (6)(a) of this section, that an offer of financial assistance has been made, the Commission shall determine the extent to which the avoidable cost of providing rail service plus a reasonable return on the value of the rail properties involved exceed the revenues attributable to the line of railroad or the rail service involved.

(8) Statutory provisions applicable to petitions filed and pending prior to February 5, 1976, or prior to promulgation of regulations by Commission

Petitions for abandonment or discontinuance which were filed and pending before the Commission as of February 5, 1976, or prior to the promulgation by the Commission of regulations required under this section shall be governed by the provisions of section 1 of this title which were in effect on February 5, 1976, except that paragraphs (6) and (7) of this section shall be applicable to such petitions.

(9) Injunctive relief; jurisdiction; parties; civil penalty

Any abandonment or discontinuance which is contrary to any provision of this section, of any regulation promulgated under this section, or of any terms and conditions of an applicable certificate, may be enjoined by an appropriate district court of the United States in a civil action commenced and maintained by the United States, the Commission, or the attorney general or the transportation regulatory body of an affected State or area. Such a court may impose a civil penalty of not to exceed $5,000 on each person who knowingly authorizes, consents to, or permits any violation of this section or of any regulation under this section.

(10) Further findings by Commission of suitability of abandoned or discontinued properties for use for other public purposes; limitations on disposal subsequent to finding

In any instance in which the Commission finds that the present or future public convenience and necessity permit abandonment or discontinuance, the Commission shall make a further finding whether such properties are suitable for use for other public purposes, including roads or highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the Commission finds that the properties proposed to be abandoned are suitable for other public purposes, it shall order that such rail properties not be sold, leased, exchanged, or otherwise disposed of except in accordance with such reasonable terms and conditions as are prescribed by the Commission, including, but not limited to, a prohibition on any such disposal, for a period not to exceed 180 days after the effective date of the order permitting abandonment unless such properties have first been offered, upon reasonable terms, for acquisition for public purposes.

(11) Definitions

As used in this section:

(a) The term "avoidable cost" means all expenses which would be incurred by a carrier in providing a service which would not be incurred, in the case of discontinuance, if such service were discontinued or, in the case of abandonment, if the line over which such service was provided were abandoned. Such expenses shall include but are not limited to all cash inflows which are foregone and all cash outflows which are incurred by such carrier as a result of not discontinuing or not abandoning such service. Such foregone cash inflows and incurred outflows shall include (i) working capital and required capital expenditures, (ii) expenditures to eliminate deferred maintenance, (iii) the current cost of freight cars, locomotives and other equipment, and (iv) the foregone tax benefits from not retiring properties from rail service and other effects of applicable Federal and State income taxes.

(b) The term "reasonable return" shall, in the case of a railroad not in reorganization, be the cost of capital to such railroad (as determined by the Commission), and, in the case of a railroad in reorganization, shall be the mean cost of capital of railroads not in reorganization, as determined by the Commission.

(Feb. 4, 1887, ch. 104, pt. I, § 1a, as added and amended Feb. 5, 1976, Pub. L. 94-210, title VIII, §§ 802, 809(c), 90 Stat. 127, 146; Oct. 19, 1976, Pub. L. 94-555, title II, § 218, 90 Stat. 2628.)

AMENDMENTS

1976—Par. (1). Pub. L. 94-555, § 218(a), added provisions following "administrative or judicial body" which limited the authority granted to the Commission under this section.

Par. (4). Pub. L. 94-555, § 218(b), added "If such a certificate is issued after an investigation pursuant to such paragraph (3), actual abandonment or discontinuance may take effect, in accordance with such certificate, 120 days after the date of issuance thereof" following "30 days after the date of issuance thereof".

Par. (10). Pub. L. 94-210, § 809(c), added par. (10). Former par. (10) redesignated (11).

Par. (11). Pub. L. 94-210, § 809(c), redesignated former par. (10) as (11).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-555 effective on Oct. 1, 1976, see section 303 of Pub. L. 94-555, set out as an Effective Date of 1976 Amendment note under section 543 of Title 45, Railroads.

CONVERSION OF ABANDONED RAILROAD RIGHTS-OF-WAY

Section 809(a) and (b) of Pub. L. 94-210, as amended by Pub. L. 94-555, title II, § 220(g), Oct. 19, 1976, 90 Stat. 2630, authorized the Secretary of Commerce, within 360 days of Feb. 5, 1976, in consultation with various offices, agencies, and private groups, to submit to Congress and the President a report on the conversion of certain abandoned railroad rights-of-way, evaluating and suggesting potential alternate uses of, and public policy with respect to the conversion of, railroad rights-of-way on which service has been discontinued or is likely to be discontinued.

AUTHORIZATION OF APPROPRIATIONS FOR CONVERSION OF ABANDONED RAILROAD RIGHTS-OF-WAY.

Section 809(d) of Pub. L. 94-210 provided that: "There are authorized to be appropriated to carry out the provisions of this section [amending this section and enacting provisions set out as notes under this section], not to exceed $6,000,000 for the fiscal year and the transitional fiscal period ending September 30, 1976, not to exceed $7,000,000 for the fiscal year ending September 30, 1977, and not to exceed $7,000,000 for the fiscal year ending September 30, 1978. Sums appropriated pursuant to this authorization are authorized to remain available until expended. Of the funds appropriated, at least four-fifths are to be made available to the Secretary of the Interior to carry out subsection (b) of this section [set out as a note above]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 45 section 715.

§ 2. Special rates and rebates prohibited

If any common carrier subject to the provisions of this chapter shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered or to be rendered, in the transportation of passengers or property, subject to the provisions of this chapter, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful.

(Feb. 4, 1887, ch. 104, pt. I, § 2, 24 Stat. 379; Feb. 28, 1920, ch. 91, § 404, 41 Stat. 479; June 19, 1934, ch. 652, § 602(b), 48 Stat. 1102; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543.)

CODIFICATION

This section constitutes the second section of act Feb. 4, 1887, known as the Interstate Commerce Act, as originally enacted, as amended by act Feb. 28, 1920.

AMENDMENTS

1935—Act Aug. 9, 1935, substituted "this part", which has been translated as "this chapter", for "this Act", meaning act Feb. 4, 1887, known as the Interstate Commerce Act.

1934—Act June 19, 1934, struck out provisions relating to wire or wireless communication. See now section 151 et seq. of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

APPLICATION OF RATEMAKING AMENDMENTS OF PUB. L. 94-210 TO EXISTING PROVISIONS

Amendment by section 202 of Pub. L. 94-210 not to modify application of this section in determining lawfulness of any rate or practice, make lawful any competitive practice which is unfair, etc., see section 202(f) of Pub. L. 94-210, set out as a note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15 of this title.

§ 3. Preferences; interchange of traffic; terminal facilities

(1) Undue preferences or prejudices prohibited

It shall be unlawful for any common carrier subject to the provisions of this chapter to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

(1a) Export rates on farm commodities; Commission's power to carry out policy

It is declared to be the policy of Congress that shippers of wheat, cotton, and all other farm commodities for export shall be granted export rates on the same principles as are applicable in the case of rates on industrial products for export. The Commission is directed, on its own initiative or an application by interested persons, to make such investigations and conduct such hearings, and, after appropriate proceedings, to issue such orders, as may be necessary to carry out such policy.

(2) Payment of freight as prerequisite to delivery

No carrier by railroad and no express company subject to the provisions of this chapter shall deliver or relinquish possession at destination of any freight or express shipment transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may

from time to time prescribe to govern the settlement of all such rates and charges and to prevent unjust discrimination: *Provided*, That the provisions of this paragraph shall not be construed to prohibit any carrier or express company from extending credit in connection with rates and charges on freight or express shipments transported for the United States, for any department, bureau, or agency thereof, or for any State or Territory or political subdivision thereof, or for the District of Columbia. Where carriers by railroad are instructed by a shipper or consignor to deliver property transported by such carriers to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect of the transportation of such property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee (a) is an agent only and has no beneficial title in the property, and (b) prior to delivery of the property has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of a shipment reconsigned or diverted to a point other than that specified in the original bill of lading, has also notified the delivering carrier in writing of the name and address of the beneficial owner of the property. In such cases the shipper or consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner, shall be liable for such additional charges, irrespective of any provisions to the contrary in the bill of lading or in the contract under which the shipment was made. An action for the enforcement of such liability may be begun within the period provided in paragraph (3) of section 16 of this title or before the expiration of six months after final judgment against the carrier in an action against the consignee begun within the period provided in paragraph (3) of section 16 of this title. If the consignee has given to the carrier erroneous information as to who the beneficial owner is, such consignee shall himself be liable for such additional charges, notwithstanding the foregoing provisions of this paragraph. An action for the enforcement of such liability may be begun within the period provided in paragraph (3) of section 16 of this title or before the expiration of six months after final judgment against the carrier in an action against the beneficial owner named by the consignee begun within the period provided in paragraph (3) of section 16 of this title. On shipments reconsigned or diverted by an agent who has furnished the carrier in the reconsignment or diversion order with a notice of agency and the proper name and address of the beneficial owner, and where such shipments are refused or abandoned at ultimate destination, the said beneficial owner shall be liable for all legally applicable charges in connection therewith. If the reconsignor or diverter has given to the carrier erroneous information as to who the beneficial owner is, such reconsignor or diverter shall himself be liable for all such charges, and an action for the enforcement of his liability may be begun within the same period provided in the case of an action against a consignee who has given erroneous information as to the beneficial owner.

(3) Liability of shipper-consignee for freight where delivery is made to another party upon instruction

If a shipper or consignor of a shipment of property (other than a prepaid shipment) is also the consignee named in the bill of lading and, prior to the time of delivery, notifies, in writing, a delivering carrier by railroad or a delivering express company subject to the provisions of this chapter, (a) to deliver such property at destination to another party, (b) that such party is the beneficial owner of such property, and (c) that delivery is to be made to such party only upon payment of all transportation charges in respect of the transportation of such property, and delivery is made by the carrier to such party without such payment, such shipper or consignor shall not be liable (as shipper, consignor, consignee, or otherwise) for such transportation charges but the party to whom delivery is so made shall in any event be liable for transportation charges billed against the property at the time of such delivery, and also for any additional charges which may be found to be due after delivery of the property, except that if such party prior to such delivery has notified in writing the delivering carrier that he is not the beneficial owner of the property, and has given in writing to such delivering carrier the name and address of such beneficial owner, such party shall not be liable for any additional charges which may be found to be due after delivery of the property; but if the party to whom delivery is made has given to the carrier erroneous information as to the beneficial owner, such party shall nevertheless be liable for such additional charges. If the shipper or consignor has given to the delivering carrier erroneous information as to who the beneficial owner is, such shipper or consignor shall himself be liable for such transportation charges, notwithstanding the foregoing provisions of this paragraph and irrespective of any provisions to the contrary in the bill of lading or in the contract of transportation under which the shipment was made. An action for the enforcement of such liability either against the party to whom delivery is made or the shipper or consignor may be begun within the period provided in paragraph (3) of section 16 of this title, or before the expiration of six months after final judgment against the carrier in an action against either of such parties begun within the limitation period provided in paragraph (3) of section 16 of this title. The term "delivering carrier" means the line-haul carrier making ultimate delivery.

(4) Interchange of traffic

All carriers subject to the provisions of this chapter shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically

routed by the shipper. As used in this paragraph the term "connecting line" means the connecting line of any carrier subject to the provisions of this chapter or any common carrier by water, subject to chapter 12 of this title.

(5) Terminal facilities; use of and compensation for

If the Commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a common carrier by railroad owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power by order to require the use of any such terminal facilities, including mainline track or tracks for a reasonable distance outside of such terminal, of any common carrier by railroad, by another such carrier or other such carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree, as the Commission may fix as just and reasonable for the use so required, to be ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced. If under this paragraph the use of such terminal facilities of any carrier is required to be given to another carrier or other carriers, and the carrier whose terminal facilities are required to be so used is not satisfied with the terms fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have thus been required to be given to another carrier or other carriers shall be entitled to recover, by suit or action against such other carrier or carriers, proper damages for any injuries sustained by it as the result of compliance with such requirement, or just compensation for such use, or both, as the case may be.

(Feb. 4, 1887, ch. 104, pt. I, § 3, 24 Stat. 380; Feb. 28, 1920, ch. 91, § 405, 41 Stat. 479; Mar. 4, 1927, ch. 510, § 1, 44 Stat. 1447; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Aug. 12, 1935, ch. 509, 49 Stat. 607; Sept. 18, 1940, ch. 722, title I, § 5(a), (c)–(f), 54 Stat. 902; Aug. 2, 1949, ch. 379, § 2(a), 63 Stat. 485.)

AMENDMENTS

1949—Par. (2). Act Aug. 2, 1949, brought express companies within its provisions.

1940—Par. (1). Act Sept. 18, 1940, § 5(a), set out par. (1).

Par. (1a). Act Sept. 18, 1940, § 5(a), set out par. (1a).

Par. (2). Act Sept. 18, 1940, § 5(c) amended par. (2).

Par. (3). Act Sept. 18, 1940, § 5(d), added par. (3), and redesignated former par. (3) as "(4)".

Par. (4). Act Sept. 18, 1940, § 5(e), redesignated former par. (3) as "(4)" and amended said par. "(4)". Former par. (4) redesignated "(5)" and amended by section 5(f) of act Sept. 18, 1940.

Par. (5). Act Sept. 18, 1940, § 5(f), redesignated former par. (4) as "(5)" and amended said par. "(5)".

1935—Act Aug. 9, 1935, substituted "this part", which has been translated as "this chapter", for "this Act", meaning act Feb. 4, 1887, known as the Interstate Commerce Act.

Par. (1). Act Aug. 12, 1935, amended par. (1).

1927—Par. (2). Act Mar. 4, 1927, amended par. (2).

EFFECTIVE DATE OF 1949 AMENDMENT

Section 2(b) of act Aug. 2, 1949, provided that the amendment of par. (2) by act Aug. 2, 1949, shall be effective six months after Aug. 2, 1949.

APPLICATION OF RATEMAKING AMENDMENTS OF PUB. L. 94-210 TO EXISTING PROVISIONS

Amendment by section 202 of Pub. L. 94-210 not to modify application of this section in determining lawfulness of any rate or practice, make lawful any competitive practice which is unfair, etc., see section 202(f) of Pub. L. 94-210, set out as a note under section 1 of this title.

INVESTIGATION BY COMMISSION OF RATES ON MANUFACTURED AND AGRICULTURAL PRODUCTS AND RAW MATERIALS

Section 5(b) of act Sept. 18, 1940, provided that:

"The Interstate Commerce Commission is authorized and directed to institute an investigation into the rates on manufactured products, agricultural commodities, and raw materials, between points in one classification territory and points in another such territory, and into like rates within any of such territories, maintained by common carriers by rail or water subject to part I of the Interstate Commerce Act, as amended (this chapter), for the purpose of determining whether said rates are unjust and unreasonable or unlawful in any other respect in and of themselves or in their relation to each other, and to enter such orders as may be appropriate for the removal of any unlawfulness which may be found to exist: *Provided*, That the Commission in its discretion may confine its investigation to such manufactured products, agricultural commodities, and raw materials, and the rates thereon as shippers thereof may specifically request be included in such investigation."

CROSS REFERENCES

Failure of carrier or officer to obey orders, penalty, see section 16 of this title.

Rebates and discrimination, see sections 2 and 41 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15, 16 of this title.

§ 4. Long and short haul charges; competition with water routes

(1) Charges for long and short hauls and on through route; exemption

It shall be unlawful for any common carrier subject to this chapter or chapter 12 of this title to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this chapter or chapter 12 of this title, but this shall not be construed as authorizing any common carrier within the terms of this chapter or chapter 12 of this title to charge or receive as great compensation for a shorter as for a longer distance: *Provided*, That upon application to the Commission and after investigation, such carrier, in special cases, may be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property, and the Commission may from time to time prescribe the extent to which such designated carriers may be relieved from the operation of the foregoing provisions of this section, but in exercising the authority conferred upon it in this proviso, the Commission shall not permit the establishment of any charge to or from the more distant point that is

not reasonably compensatory for the service performed; and no such authorization shall be granted on account of merely potential water competition not actually in existence: *Provided further,* That any such carrier or carriers operating over a circuitous line or route may, subject only to the standards of lawfulness set forth in other provisions of this chapter or chapter 12 of this title and without further authorization, meet the charges of such carrier or carriers of the same type operating over a more direct line or route, to or from the competitive points, provided that rates so established over circuitous routes shall not be evidence on the issue of the compensatory character of rates involved in other proceedings: *And provided further,* That tariffs proposing rates subject to the provision of this paragraph requiring Commission authorization may be filed when application is made to the Commission under the provisions hereof, and in the event such application is approved, the Commission shall permit such tariffs to become effective upon one day's notice: *And provided further,* That the provisions of this paragraph shall not apply to express companies subject to the provisions of this chapter, except that the exemption herein accorded express companies shall not be construed to relieve them from the operation of any other provision contained in this Act.

(2) Competition of railroads with water routes; change of rates

Wherever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless after hearing by the Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition.

(Feb. 4, 1887, ch. 104, pt. I, § 4, 24 Stat. 380; June 18, 1910, ch. 309, § 8, 36 Stat. 547; Feb. 28, 1920, ch. 91, § 406, 41 Stat. 480; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Sept. 18, 1940, ch. 722, title I, § 6(a), 54 Stat. 904; July 11, 1957, Pub. L. 85-99, 71 Stat. 292; Sept. 27, 1962, Pub. L. 87-707, 76 Stat. 635.)

REFERENCES IN TEXT

This Act, referred to in par. (1), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 1 et seq.) and chapters 8, 12, 13, and 19 (§§ 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

AMENDMENTS

1962—Pub. L. 87-707 provided for exemption of express companies.

1957—Par. (1). Pub. L. 85-99 inserted proviso allowing carriers operating over circuitous routes to meet the charges of carriers of the same type operating over more direct routes.

1940—Par. (1). Act Sept. 18, 1940, amended par. (1).

1935—Act Aug. 9, 1935, substituted "this part", which has been translated as "this chapter", for "this Act", meaning act Feb. 4, 1887, known as the Interstate Commerce Act.

APPLICATION OF RATEMAKING AMENDMENTS OF PUB. L. 94-210 TO EXISTING PROVISIONS

Amendment by section 202 of Pub. L. 94-210 not to modify application of this section in determining lawfulness of any rate or practice, make lawful any competitive practice which is unfair, etc., see section 202(f) of Pub. L. 94-210, set out as a note under section 1 of this title.

EXISTING RATES, ETC., AS AFFECTED BY ACT SEPTEMBER 18, 1940

Section 6(b) of act Sept. 18, 1940, provided that:

"In the case of a carrier heretofore subject to the provisions of paragraph (1) of section 4 of the Interstate Commerce Act, as amended [par. 1 of this section], no rate, fare, or charge lawfully in effect at the time of the enactment of this act shall be required to be changed by reason of the amendments made to such paragraph [par. 1 of this section] by subsection (a) of this section. In the case of a carrier not heretofore subject to the provisions of such paragraph, no rate, fare, or charge lawfully in effect at the time of the enactment of this act shall be required to be changed, by reason of the provisions of such paragraph, as amended by subsection (a) of this section, prior to six months after the enactment of this act, or in case application for the continuance of any such existing rate, fare, or charge is filed with the Interstate Commerce Commission within such six months period, until the Commission has acted upon such application."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15 of this title.

§ 5. Combinations and consolidations of carriers

(1) Pooling; division of traffic, service, or earnings

Except upon specific approval by order of the Commission as in this section provided, and except as provided in paragraph (16) of section 1 of this title, it shall be unlawful for any common carrier subject to this chapter, chapter 8, or chapter 12 of this title to enter into any contract, agreement, or combination with any other such common carrier or carriers for the pooling or division of traffic, or of service, or of gross or net earnings, or of any portion thereof; and in any case of an unlawful agreement for the pooling or division of traffic, service, or earnings as aforesaid each day of its continuance shall be a separate offense: *Provided,* That whenever the Commission is of opinion, after hearing upon application of any such carrier or carriers or upon its own initiative, that the pooling or division, to the extent indicated by the Commission, of their traffic, service, or gross or net earnings, or of any portion thereof, will be in the interest of better service to the public or of economy in operation, and will not unduly restrain competition, the Commission shall by order approve and authorize, if assented to by all the carriers involved, such pooling or division, under such rules and regulations, and for such consideration as between such carriers and upon such terms and conditions, as shall be found by the Commission to be just and reasonable in the premises: *Provided further,* That any contract, agreement, or combination to which any common carrier by water subject to chapter 12 of this title is a party, relating to the pooling or division of traffic, service, or earnings, or any portion thereof, lawfully existing on September 18, 1940, if filed with the Commission within six months after such date, shall continue to be lawful except to the

extent that the Commission, after hearing upon application or upon its own initiative, may find and by order declare that such contract, agreement, or combination is not in the interest of better service to the public or of economy in operation, or that it will unduly restrain competition.

(2) Unifications, mergers, and acquisitions of control; procedures applicable

(a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b) of this paragraph or paragraph (3)–

(i) for two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership; or for any carrier, or two or more carriers jointly, to purchase, lease, or contract to operate the properties, or any part thereof, of another; or for any carrier, or two or more carriers jointly, to acquire control of another through ownership of its stock or otherwise; or for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock or otherwise; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise; or

(ii) for a carrier by railroad to acquire trackage rights over, or joint ownership in or joint use of, any railroad line or lines owned or operated by any other such carrier, and terminals incidental thereto.

(b) Whenever a transaction is proposed under subdivision (a) of this paragraph, the carrier or carriers or person seeking authority therefor shall present an application to the Commission, and thereupon the Commission shall notify the Governor of each State in which any part of the properties of the carriers involved in the proposed transaction is situated, and also such carriers and the applicant or applicants (and, in case carriers by motor vehicle are involved, the persons specified in section 305(e) of this title), and shall afford reasonable opportunity for interested parties to be heard. If the Commission shall consider it necessary in order to determine whether the findings specified below may properly be made, it shall set said application for public hearing; and a public hearing shall be held in all cases where carriers by railroad are involved unless the Commission determines that a public hearing is not necessary in the public interest. If the Commission finds that, subject to such terms and conditions and such modifications as it shall find to be just and reasonable, the proposed transaction is within the scope of subdivision (a) of this paragraph and will be consistent with the public interest, it shall enter an order approving and authorizing such transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable: *Provided*, That if a carrier by railroad subject to this chapter, or any person which is controlled by such a carrier, or affiliated therewith within the meaning of paragraph (6) of this section, is an applicant in the case of any such proposed transaction involving a motor carrier, the Commission shall not enter such an order unless it finds that the transaction proposed will be consistent with the public interest and will enable such carrier to use service by motor vehicle to public advantage in its operations and will not unduly restrain competition.

(c) In passing upon any proposed transaction under the provisions of this paragraph, the Commission shall give weight to the following considerations, among others: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction; and (4) the interest of the carrier employees affected.

(d) The Commission shall have authority in the case of a proposed transaction under this paragraph involving a railroad or railroads, as a prerequisite to its approval of the proposed transaction, to require, upon equitable terms, the inclusion of another railroad or other railroads in the territory involved, upon petition by such railroad or railroads requesting such inclusion, and upon a finding that such inclusion is consistent with the public interest.

(e) No transaction which contemplates a guaranty or assumption of payment of dividends or of fixed charges, shall be approved by the Commission under this paragraph except upon a specific finding by the Commission that such guaranty or assumption is not inconsistent with the public interest. No transaction shall be approved under this paragraph which will result in an increase of total fixed charges, except upon a specific findings by the Commission that such increase would not be contrary to public interest.

(f) As a condition of its approval, under this paragraph or paragraph (3), of any transaction involving a carrier or carriers by railroad subject to the provisions of this chapter, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Such arrangement shall contain provisions no less protective of the interests of employees than those imposed before February 5, 1976, pursuant to this subdivision and those established pursuant to section 565 of title 45. Notwithstanding any other provisions of this Act, an agreement pertaining to the protection of the interests of said employees may be entered into after September 18, 1940, by any carrier or carriers by railroad and the duly author-

ized representative or representatives of its or their employees.

(g) In any case arising under this paragraph which involves a common carrier by railroad, the Commission shall—

(i) within 30 days after the date on which an application is filed with the Commission and after a certified copy of such application is furnished to the Secretary of Transportation, (A) publish notice thereof in the Federal Register, or (B) if such application is incomplete, reject such application by order, which order shall be deemed to be final under the provisions of section 17 of this title;

(ii) provide that written comments on an application, as to which such notice is published, may be filed within 45 days after the publication of such notice in the Federal Register;

(iii) require that copies of any such comments shall be served upon the Secretary of Transportation and the Attorney General, each of whom shall be afforded 15 days following the date of receipt thereof to inform the Commission whether he will intervene as a party to the proceeding, and if so, to submit preliminary views on such application;

(iv) require that all other applications, which are inconsistent, in whole or in part, with such applications, and all petitions for inclusion in the transaction, shall be filed with the Commission and furnished to the Secretary of Transportation, within 90 days after the publication of notice of the application in the Federal Register;

(v) conclude any evidentiary proceedings within 240 days following the date of such publication of notice, except that in the case of an application involving the merger or control of two or more class I railroads, as defined by the Commission, the Commission shall conclude any evidentiary proceedings not more than 24 months following the date upon which notice of the application was published in the Federal Register; and

(vi) issue a final decision within 180 days following the date upon which the evidentiary proceeding is concluded.

If the Commission fails to issue a decision which is final within the meaning of section 17 of this title within such 180-day period, it shall notify the Congress in writing of such failure and the reasons therefor. If the Commission determines that the due and timely execution of its functions under this paragraph so requires, or that an application brought under this paragraph is of major transportation importance, it may order that the case be referred directly (without an initial decision by a division, individual Commissioner, board, or administrative law judge) to the full Commission for a decision which is final within the meaning of section 17 of this title.

(h) The Secretary of Transportation may propose any modification of any transaction governed by this paragraph which involves a carrier by railroad. The Secretary shall have standing to appear before the Commission in support of any such proposed modification.

(3) Expedited merger, consolidation, etc., procedure; applicability; prerequisites

(a) If a merger, consolidation, unification or coordination project (as described in section 1654(c) of this title), joint use of tracks or other facilities, or acquisition or sale of assets, which involves any common carrier by railroad subject to this chapter, is proposed by an eligible party in accordance with subdivision (b) of this paragraph during the period beginning on February 5, 1976, and ending on December 31, 1981, the party seeking authority for the execution or implementation of such transaction may utilize the procedure set forth in this paragraph or in paragraph (2) of this section.

(b) Any transaction described in subdivision (a) of this paragraph may be proposed to the Commission by—

(i) the Secretary of Transportation (hereafter in this paragraph referred to as the "Secretary"), with the consent of the common carriers by railroad subject to this chapter which are parties to such transaction; or

(ii) any such carrier which, not less than 6 months prior to such submission to the Commission, submitted such proposed transaction to the Secretary for evaluation pursuant to subdivision (f) of this paragraph.

(c) Whenever a transaction described in subdivision (a) of this paragraph is proposed under this paragraph, the proposing party shall submit an application for approval thereof to the Commission, in accordance with such requirements as to form, content, and documentation as the Commission may prescribe. Within 10 days after the date of receipt of such an application, the Commission shall send a notice of such proposed transaction to—

(i) the Governor of each State which may be affected, directly or indirectly, by such transaction if it is executed or implemented;

(ii) the Attorney General;

(iii) the Secretary of Labor; and

(iv) the Secretary (except where the Secretary is the proposing party).

The Commission shall accompany its notice to the Secretary with a request for the report of the Secretary pursuant to clause (v) of subdivision (f) of this paragraph. Each such notice shall include a copy of such application; a summary of the proposed transaction involved, and the proposing party's reasons and public interest justifications therefor.

(d) The Commission shall hold a public hearing on each application submitted to it pursuant to subdivision (c) of this paragraph, within 90 days after the date of receipt of such application. Such public hearing shall be held before a panel of the Commission duly designated for such purpose by the Commission. Such panel may utilize administrative law judges and the Rail Services Planning Office in such manner as it considers appropriate for the conduct of the hearing, the evaluation of such application and comments thereon, and the timely and reasonable determination of whether it is in the public interest to grant such application and to approve such proposed transaction pursuant to subdivision (g) of this paragraph. Such panel shall complete such hearing within 180 days after the date of referral of such application to

such panel, and it may, in order to meet such requirement, prescribe such rules and make such rulings as may tend to avoid unnecessary costs or delay. Such panel shall recommend a decision and certify the record to the full Commission for final decision, within 90 days after the termination of such hearing. The full Commission shall hear oral argument on the matter so certified, and it shall render a final decision within 120 days after receipt of the certified record and recommended decision of such panel. The Commission may, in its discretion, extend any time period set forth in this subdivision, except that the final decision of the Commission shall be rendered not later than the second anniversary of the date of receipt of such an application by the Commission.

(e) In making its recommended decision with respect to any transaction proposed under this paragraph, the duly designated panel of the Commission shall—

(i) request the views of the Secretary, with respect to the effect of such proposed transaction on the national transportation policy, as stated by the Secretary, and consider the matter submitted under subdivision (f) of this paragraph;

(ii) request the views of the Attorney General, with respect to any competitive or anticompetitive effects of such proposed transaction; and

(iii) request the views of the Secretary of Labor, with respect to the effect of such proposed transaction on railroad employees, particularly as to whether such proposal contains adequate employee protection provisions.

Such views shall be submitted in writing and shall be available to the public upon request.

(f) Whenever a proposed transaction is submitted to the Secretary by a common carrier by railroad pursuant to clause (ii) of subdivision (b) of this paragraph, and whenever the Secretary develops a proposed transaction for submission to the Commission pursuant to subdivision (c) of this paragraph, the Secretary shall—

(i) publish a summary and a detailed account of the contents of such proposed transaction in the Federal Register, in order to provide reasonable notice to interested parties and the public of such proposed transaction;

(ii) give notice of such proposed transaction to the Attorney General and to the Governor of each State in which any part of the properties of the common carriers by railroad involved in such proposed transaction are situated;

(iii) conduct an informal public hearing with respect to such proposed transaction and provide an opportunity for all interested parties to submit written comments;

(iv) study each such proposed transaction with respect to—

(A) the needs of rail transportation in the geographical area affected;

(B) the effect of such proposed transaction on the retention and promotion of competition in the provision of rail and other transportation services in the geographical area affected;

(C) the environmental impact of such proposed transaction and of alternative choices of action;

(D) the effect of such proposed transaction on employment;

(E) the cost of rehabilitation and modernization of track, equipment, and other facilities, with a comparison of the potential savings or losses from other possible choices of action;

(F) the rationalization of the rail system;

(G) the impact of such proposed transaction on shippers, consumers, and railroad employees;

(H) the effect of such proposed transaction on the communities in the geographical areas affected and on the geographical areas contiguous to such areas; and

(I) whether such proposed transaction will improve rail service; and

(v) submit a report to the Commission setting forth the results of each study conducted pursuant to clause (iv) of this subdivision, within 10 days after an application is submitted to the Commission pursuant to subdivision (c) of this paragraph, with respect to the proposed transaction which is the subject of such study. The Commission shall give due weight and consideration to such report in making its determinations under this paragraph.

(g) The Commission may—

(i) approve a transaction proposed under this paragraph, if the Commission determines that such proposed transaction is in the public interest; and

(ii) condition its approval of any such proposed transaction on any terms, conditions, and modifications which the Commission determines are in the public interest; or

(iii) disapprove any such proposed transaction, if the Commission determines that such proposed transaction is not in the public interest.

In each such case, the decision of the Commission shall be accompanied by a written opinion setting forth the reasons for its action.

(4) Noncarrier deemed carrier upon acquiring control

Whenever a person which is not a carrier is authorized, by an order entered under paragraph (2) of this section, to acquire control of any carrier or of two or more carriers, such person thereafter shall, to the extent provided by the Commission in such order, be considered as a carrier subject to such of the following provisions as are applicable to any carrier involved in such acquisition of control: Sections 20(1) to (10), 304(a)(1) and (2), 320 and 913 of this title, (which relate to reports, accounts, and so forth, of carriers), and sections 20a(2) to (11), and 314 of this title, (which relate to issues of securities and assumptions of liability of carriers), including in each case the penalties applicable in the case of violations of such provisions. In the application of such provisions of sections 20a and 314 of this title, in the case of any such person, the Commission shall authorize the issue or assumption applied for only if it finds that such issue or assumption is consistent with the proper performance of its service to the public by each carrier which is under the control of

such person, that it will not impair the ability of any such carrier to perform such service, and that it is otherwise consistent with the public interest.

(5) Control effected by other than prescribed methods

It shall be unlawful for any person, except as provided in paragraphs (2) and (3) of this section, to enter into any transaction within the scope of subdivision (a) of paragraph (2) of this section, or to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more carriers, however such result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever. It shall be unlawful to continue to maintain control or management accomplished or effectuated after the enactment of this amendatory paragraph and in violation of its provisions. As used in this paragraph and paragraph (6) of this section, the words "control or management" shall be construed to include the power to exercise control or management.

(6) Transactions deemed to effectuate control or management

For the purposes of this section, but not in anywise limiting the application of the provisions thereof, any transaction shall be deemed to accomplish or effectuate the control or management in a common interest of two carriers—

(a) if such transaction is by a carrier, and if the effect of such transaction is to place such carrier and persons affiliated with it, taken together, in control of another carrier;

(b) if such transaction is by a person affiliated with a carrier, and if the effect of such transaction is to place such carrier and persons affiliated with it, taken together, in control of another carrier;

(c) if such transaction is by two or more persons acting together, one of whom is a carrier or is affiliated with a carrier, and if the effect of such transaction is to place such persons and carriers and persons affiliated with any one of them and persons affiliated with any such affiliated carrier, taken together, in control of another carrier.

(7) Affiliation with a carrier defined

For the purposes of this section a person shall be held to be affiliated with a carrier if, by reason of the relationship of such person to such carrier (whether by reason of the method of, or circumstances surrounding organization or operation, or whether established through common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or any other direct or indirect means), it is reasonable to believe that the affairs of any carrier of which control may be acquired by such person will be managed in the interest of such other carrier.

(8) Investigation by Commission of effectuation of control by nonprescribed methods

The Commission is authorized, upon complaint or upon its own initiative without complaint, but after notice and hearing, to investigate and determine whether any person is violating the provisions of paragraph (5) of this section. If the Commission finds after such investigation that such person is violating the provisions of such paragraph, it shall by order require such person to take such action as may be necessary, in the opinion of the Commission, to prevent continuance of such violation. The provisions of this paragraph shall be in addition to, and not in substitution for, any other enforcement provisions contained in this chapter; and with respect to any violation of paragraphs (2) to (13) of this section, any penalty provision applying to such a violation by a common carrier subject to this chapter shall apply to such a violation by any other person.

(9) Jurisdiction of injunctions, etc., against violations of section or orders

The district courts of the United States shall have jurisdiction upon the complaint of the Commission, alleging a violation of any of the provisions of this section or disobedience of any order issued by the Commission thereunder by any person, to issue such writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain such person from violation of such provision or to compel obedience to such order.

(10) Supplemental orders by Commission

The Commission may from time to time, for good cause shown, make such orders, supplemental to any order made under paragraph (1), (2) or (8) of this section, as it may deem necessary or appropriate.

(11) Unifications, consolidations, etc., of motor carriers only

Nothing in this section shall be construed to require the approval or authorization of the Commission in the case of a transaction within the scope of paragraph (2) of this section where the only parties to the transaction are motor carriers subject to chapter 8 of this title (but not including a motor carrier controlled by or affiliated with a carrier as defined in section 1(3) of this title), and where the aggregate gross operating revenues of such carriers have not exceeded $300,000 for a period of twelve consecutive months ending not more than six months preceding the date of the agreement of the parties covering the transaction.

Nothing in this section shall be construed to require the approval or authorization of the Commission in the case of a transaction within the scope of paragraph (2) of this section where the only parties to the transaction are street, suburban, or interurban electric railways none of which is controlled by or under common control with any carrier which is operated as part of a general steam railroad system of transportation.

(12) Plenary nature of authority under section

The authority conferred by this section shall be exclusive and plenary, and any carrier or corporation participating in or resulting from any transaction approved by the Commission thereunder, shall have full power (with the assent, in the case of a purchase and sale, a lease, a corporate consolidation, or a corporate merger, of a majority, unless a different vote is required under applicable State law, in which case the number so required shall assent, of the votes of the holders of the shares entitled to

vote of the capital stock of such corporation at a regular meeting of such stockholders, the notice of such meeting to include such purpose, or at a special meeting thereof called for such purpose) to carry such transaction into effect and to own and operate any properties and exercise any control or franchises acquired through said transaction without invoking any approval under State authority; and any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission, and to hold, maintain, and operate any properties and exercise any control or franchises acquired through such transaction. Nothing in this section shall be construed to create or provide for the creation, directly or indirectly, of a Federal corporation, but any powers granted by this section to any carrier or other corporation shall be deemed to be in addition to and in modification of its powers under its corporate charter or under the laws of any State.

(13) Separability clause

If any provision of the foregoing paragraphs of this section, or the application thereof to any person or circumstances, is held invalid, the other provisions of such paragraphs, and the application of such provision to any other person or circumstances, shall not be affected thereby.

(14) Carrier defined

As used in paragraphs (2) to (13) of this section, inclusive, the term "carrier" means a carrier by railroad and an express company and a sleeping-car company, subject to this chapter; and a motor carrier subject to chapter 8 of this title; and a water carrier subject to chapter 12 of this title.

(15) Interest in competing water carrier; prohibition

Notwithstanding the provisions of paragraph (2) of this section, from and after the 1st day of July 1914, it shall be unlawful for any carrier, as defined in section 1(3) of this title, or (after September 18, 1940) any person controlling, controlled by, or under common control with, such a carrier to own, lease, operate, control, or have any interest whatsoever (by stock ownership or otherwise, either directly, indirectly, through any holding company, or by stockholders or directors in common, or in any other manner) in any common carrier by water operated through the Panama Canal or elsewhere with which such carrier aforesaid does or may compete for traffic or any vessel carrying freight or passengers upon said water route or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic; and in case of the violation of this provision each day in which such violation continues shall be deemed a separate offense.

(16) Determination of fact of competition

Jurisdiction is conferred on the Commission to determine questions of fact, arising under paragraph (15) of this section, as to the competition or possibility of competition, after full hearing, on the application of any railroad company or other carrier. Such application may be filed for the purpose of determining whether any existing service is in violation of such paragraph and may pray for an order permitting the continuance of any vessel or vessels already in operation, or may pray for an order under the provisions of paragraph (17) of this section. The Commission may on its own motion or the application of any shipper institute proceedings to inquire into the operation of any vessel in use by any railroad or other carrier which has not applied to the Commission and had the question of competition or the possibility of competition determined as herein provided. In all such cases the order of said Commission shall be final.

(17) Permission of interest in competing water carrier

Notwithstanding the provisions of paragraph (15) of this section, the Commission shall have authority, upon application of any carrier, as defined in section 1(3) of this title, and after hearing, by order to authorize such carrier to own or acquire ownership of, to lease or operate, to have or acquire control of, or to have or acquire an interest in, a common carrier by water or vessel, not operated through the Panama Canal, with which the applicant does or may compete for traffic, if the Commission shall find that the continuance or acquisition of such ownership, lease, operation, control, or interest will not prevent such common carrier by water or vessel from being operated in the interest of the public and with advantage to the convenience and commerce of the people, and that it will not exclude, prevent, or reduce competition on the route by water under consideration: *Provided*, That if the transaction or interest sought to be entered into, continued, or acquired is within the scope of paragraph (2)(a) of this section, the provisions of paragraph (2) of this section shall be applicable thereto in addition to the provisions of this paragraph: *And provided further*, That no such authorization shall be necessary if the carrier having the ownership, lease, operation, control, or interest has, prior to September 18, 1940, obtained an order of extension under the provisions of paragraph (21) of this section, as in effect prior to such date, and such order is still in effect.

(Feb. 4, 1887, ch. 104, pt. I, § 5, 24 Stat. 380; Aug. 24, 1912, ch. 390, § 11, 37 Stat. 566; Feb. 28, 1920, ch. 91, §§ 407, 408, 41 Stat. 480, 482; June 10, 1921, ch. 20, 42 Stat. 27; June 16, 1933, ch. 91, title II, §§ 201–203, 48 Stat. 217–220; June 19, 1934, ch. 652, § 602(b), 48 Stat. 1102; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Sept. 18, 1940, ch. 722, title I, § 7, 54 Stat. 905; Aug. 2, 1949, ch. 379, §§ 3, 4, 63 Stat. 485; July 27, 1965, Pub. L. 89-93, § 1, 79 Stat. 284; Feb. 5, 1976, Pub. L. 94-210, title IV, §§ 402, 403, 90 Stat. 62, 63; Oct. 19, 1976, Pub. L. 94-555, title II, § 220(i), 90 Stat. 2630.)

REFERENCES IN TEXT

This Act, referred to in par. (2)(f), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate

Commerce Act, which is classified generally to this chapter (§ 1 et seq.) and chapters 8, 12, 13, and 19 (§§ 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

The antitrust laws, referred to in par. (12), are classified generally to section 1 et seq. of Title 15, Commerce and Trade.

Paragraph (21) of this section, as in effect prior to Sept. 18, 1940, referred to in par. (17), means the third undesignated paragraph of act Aug. 24, 1912, ch. 390, § 11, 37 Stat. 567, which had been set out as par. (21) of this section prior to the general amendment of this section by act Sept. 18, 1940, ch. 722, § 7, 54 Stat. 905.

CODIFICATION

In par. (2)(f), the words "imposed before February 5, 1976" appearing in the penultimate sentence have been substituted for "heretofore imposed" to reflect the date that sentence was added to the paragraph. In the last sentence, the words "be entered into after September 18, 1940" have been substituted for "hereafter be entered into" to reflect the date that sentence was added to the paragraph.

AMENDMENTS

1976—Par. (2)(a). Pub. L. 94-210, § 403(b)(1), added reference to paragraph (3) of this section.

Par. (2)(b). Pub. L. 94-210, § 403(b)(9), substituted "subdivision" for "subparagraph", which for purposes of codification had already been editorially translated, thereby requiring no further change in text.

Par. (2)(f). Pub. L. 94-210, §§ 402(a), 403(b)(2), added provisions relating to protective requirements imposed pursuant to this subd. and section 565 of title 45, and added reference to paragraph (3) of this section.

Par. (2)(g), (h). Pub. L. 94-210, § 402(b), added par. (2)(g) and (h).

Par. (3). Pub. L. 94-210, § 403(a), added par. (3). Former par. (3) redesignated (4).

Par. (4). Pub. L. 94-210, § 403(a), redesignated former par. (3) as (4). Former par. (4) redesignated (5).

Par. (5). Pub. L. 94-210, § 403(a), (b)(3), (9), redesignated former par. (4) as (5) and, as so redesignated, added reference to paragraph (3) of this section, substituted "subdivision" for "subparagraph", which for purposes of codification had already been editorially translated, thereby requiring no further change in text, and substituted reference to paragraph (6) for reference to paragraph (5). Former par. (5) redesignated (6).

Par. (6). Pub. L. 94-210, § 403(a), redesignated former par. (5) as (6). Former par. (6) redesignated (7).

Par. (7). Pub. L. 94-210, § 403(a), redesignated former par. (6) as (7). Former par. (7) redesignated (8).

Par. (8). Pub. L. 94-210, § 403(a), (b)(4), redesignated former par. (7) as (8) and, as so redesignated, substituted reference to paragraph (5) of this section for reference to paragraph (4) of this section and reference to paragraphs (2) to (13) for reference to paragraphs (2) to (12). Former par. (8) redesignated (9).

Par. (9). Pub. L. 94-210, § 403(a), redesignated former par. (8) as (9). Former par. (9) redesignated (10).

Par. (10). Pub. L. 94-210, § 403(a), (b)(5), redesignated former par. (9) as (10) and, as so redesignated, substituted reference to paragraph (8) of this section for reference to paragraph (7) of this section. Former par. (10) redesignated (11).

Par. (11). Pub. L. 94-210, § 403(a), redesignated former par. (10) as (11). Former par. (11) redesignated (12).

Par. (12). Pub. L. 94-210, § 403(a), redesignated former par. (11) as (12). Former par. (12) redesignated (13).

Par. (13). Pub. L. 94-210, § 403(a), redesignated former par. (12) as (13). Former par. (13) redesignated (14).

Par. (14). Pub. L. 94-210, § 403(a), (b)(6), redesignated former par. (13) as (14) and, as so redesignated, substituted reference to paragraphs (2) to (13) of this section for reference to paragraphs (2) to (12) of this section. Former par. (14) redesignated (15).

Par. (15). Pub. L. 94-210, § 403(a), redesignated former par. (14) as (15). Former par. (15) redesignated (16).

Par. (16). Pub. L. 94-555 substituted "paragraph (17)" for "paragraph (16)" following "the provisions of".

Pub. L. 94-210, § 403(a), (b)(7), redesignated former par. (15) as (16) and, as so redesignated, substituted reference to paragraph (15) of this section for reference to paragraph (14) of this section. Former par. (16) redesignated (17).

Par. (17). Pub. L. 94-210, § 403(a), (b)(8), redesignated former par. (16) as (17) and, as so redesignated, substituted reference to paragraph (15) of this section for reference to paragraph (14) of this section.

1965—Pub. L. 89-93 substituted gross operating revenues, with an upper limit of $300,000 for a period of twelve consecutive months ending not more than six months preceding the date of the agreement of the parties covering the transaction, for the number of vehicles owned, leased, controlled, or operated for the purposes of transportation subject to chapter 8 of this title, with an upper limit of 20, as the basis for determining whether a proposed unification or acquisition of control is exempt from the provisions of this section.

1949—Par. (2)(b). Act Aug. 2, 1949, § 3, gave the Commission discretion as to whether a public hearing is necessary.

Par. (10). Act Aug. 2, 1949, § 4(a), in last subpar., took out of the section local electric lines which are not operated by, or under the control of, a steam railroad.

Par. (13). Act Aug. 2, 1949, § 4(b), included sleeping car company within the definition of carrier.

1940—Act Sept. 18, 1940, amended section in its entirety.

1935—Act Aug. 9, 1935, substituted "this part", which has been translated "this chapter", for "this Act", meaning act Feb. 4, 1887, known as the Interstate Commerce Act.

1934—Par. (18). Act June 19, 1934, repealed par. (18), relating to acquisition or consolidation of telephone companies, which is now covered by section 221 of Title 47, Telegraphs, Telephones, and Radiotelegraphs. Par. (18) was formerly par. (9), and was renumbered par. (18) by act June 16, 1933, § 221.

1933—Act June 16, 1933, struck out pars. (2), (3), (6), (7), (8), redesignated prior pars. (4) and (5) as (2) and (3), added Pars. (4) to (17), and redesignated prior pars. (9) to (12) as (18) to (21).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-555 effective on October 1, 1976, see section 303 of Pub. L. 94-555, set out as an Effective Date of 1976 Amendment note under section 543 of Title 45, Railroads.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 2 of Pub. L. 89-93 provided that: "The amendment made by the first section of this Act [to this section] shall apply only with respect to agreements entered into on or after the sixtieth day after the date of enactment of this Act [July 27, 1965]."

SEPARABILITY OF PROVISIONS

Section 209 of act June 16, 1933, provided as follows: "If any provision of this Act [enacting sections 5a, 15b, and 250 to 268 of this title and amending this section and sections 15a and 19a of this title] or the application thereof to any person or circumstances, is held invalid, the other provisions of this Act or the application of such provision to any other person or circumstances shall not be affected thereby".

CROSS REFERENCES

Consolidations under Railroad Reorganization Act of 1933, see section 205 of Title 11, Bankruptcy.

Control defined, see section 1 of this title.

Joint ownership or joint use of spur, industrial, team, switching, or side tracks, not prohibited by this section, see section 1 of this title.

Proceedings for obtaining, service and enforcement, and terms of orders, see section 51 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 1a, 5a, 5b, 5c, 51, 306, 312, 1011, 1377, 1378, 1609, 1636, 1654 of this title; title 45 sections 565, 662, 715, 716.

§ 5a. Combinations and consolidations existing prior to June 16, 1933

The provisions of this chapter and of all other applicable Federal statutes, as in force prior to June 16, 1933, shall remain in force, as though sections 5, 15a, 15b, and 19a of this title had not been enacted, with respect to the acquisition by any carrier, prior to June 16, 1933, of the control of any other carrier or carriers.

(June 16, 1933, ch. 91, title II, § 204, 48 Stat. 220.)

CODIFICATION

Section was enacted as a part of act June 16, 1933, popularly known as the Emergency Railroad Transportation Act, 1933 and not as a part of act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act which comprises this chapter and chapters 8, 12, 13, and 19 of this title.

§ 5b. Agreements between common carriers other than common carriers by railroad generally

(1) Definition of "carrier" and "antitrust laws"

For purposes of this section—

(A) The term "carrier" means any common carrier subject to chapter 1 (other than a common carrier by railroad), 8, or 12 of this title or any freight forwarder subject to chapter 13 of this title; and

(B) The term "antitrust laws" has the meaning assigned to such term in section 12 of title 15.

(2) Application to Commission for approval of agreements; rules and regulations

Any carrier party to an agreement between or among two or more carriers relating to rates, fares, classifications, divisions, allowances, or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment), or rules and regulations pertaining thereto, or procedures for the joint consideration, initiation or establishment thereof, may, under such rules and regulations as the Commission may prescribe, apply to the Commission for approval of the agreement, and the Commission shall by order approve any such agreement (if approval thereof is not prohibited by paragraph (4), (5), or (6) of this section) if it finds that, by reason of furtherance of the national transportation policy declared in this Act, the relief provided in paragraph (9) of this section should apply with respect to the making and carrying out of such agreement; otherwise the application shall be denied. The approval of the Commission shall be granted only upon such terms and conditions as the Commission may prescribe as necessary to enable it to grant its approval in accordance with the standard above set forth in this paragraph.

(3) Maintenance of accounts and records by conferences, bureaus, committees, etc.

Each conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the Commission under the provisions of this section shall maintain such accounts, records, files, and memoranda and shall submit to the Commission such reports, as may be prescribed by the Commission, and all such accounts, records, files, and memoranda shall be subject to inspection by the Commission or its duly authorized representatives.

(4) Agreements between carriers of different classes

The Commission shall not approve under this section any agreement between or among carriers of different classes unless it finds that such agreement is of the character described in paragraph (2) of this section and is limited to matters relating to transportation under joint rates or over through routes; and for purposes of this paragraph carriers by railroad, express companies, and sleeping-car companies are carriers of one class; pipe-line companies are carriers of one class; carriers by motor vehicle are carriers of one class; carriers by water are carriers of one class; and freight forwarders are carriers of one class.

(5) Pooling or division agreements

The Commission shall not approve under this section any agreement which it finds is an agreement with respect to a pooling, division, or other matter or transaction, to which section 5 of this title is applicable.

(6) Agreements for determining matters through joint consideration

The Commission shall not approve under this section any agreement which establishes a procedure for the determination of any matter through joint consideration unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action either before or after any determination arrived at through such procedure.

(7) Investigation of prior approved agreements; termination or modification of approval; effective date

The Commission is authorized, upon complaint or upon its own initiative without complaint, to investigate and determine whether any agreement previously approved by it under this section, or terms and conditions upon which such approval was granted, is not or are not in conformity with the standard set forth in paragraph (2) of this section, or whether any such terms and conditions are not necessary for purposes of conformity with such standard, and, after such investigation, the Commission shall by order terminate or modify its approval of such agreement if it finds such action necessary to insure conformity with such standard, and shall modify the terms and conditions upon which such approval was granted to the extent it finds necessary to insure conformity with such standard or to the extent to which it finds such terms and conditions not necessary to insure such conformity. The effective date of any order terminating or modifying approval, or modifying terms and conditions, shall be postponed for such period as the Commission

determines to be reasonably necessary to avoid undue hardship.

(8) Hearings

No order shall be entered under this section except after interested parties have been afforded reasonable opportunity for hearing.

(9) Relief from operation of antitrust laws

Parties to any agreement approved by the Commission under this section and other persons are, if the approval of such agreement is not prohibited by paragraph (4), (5), or (6) of this section, relieved from the operation of the antitrust laws with respect to the making of such agreement, and with respect to the carrying out of such agreement in conformity with its provisions and in conformity with the terms and conditions prescribed by the Commission.

(10) Effect of Commission's action

Any action of the Commission under this section in approving an agreement, or in denying an application for such approval, or in terminating or modifying its approval of an agreement, or in prescribing the terms and conditions upon which its approval is to be granted, or in modifying such terms and conditions, shall be construed as having effect solely with reference to the applicability of the relief provisions of paragraph (9) of this section.

(Feb. 4, 1887, ch. 104, pt. I, § 5a, as added June 17, 1948, ch. 491, 62 Stat. 472, and amended Feb. 5, 1976, Pub. L. 94-210, title II, § 208(a), 90 Stat. 42.)

REFERENCES IN TEXT

This Act, referred to in par. (2), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 1 et seq.) and chapters 8, 12, 13, and 19 (§§ 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

AMENDMENTS

1976—Par. (1)(A). Pub. L. 94-210 added "(other than a common carrier by railroad)" following "1".

EFFECTIVE DATE OF 1976 AMENDMENT

Section 208(a) of Pub. L. 94-210 provided in part that the amendment by Pub. L. 94-210 shall be effective 270 days after Feb. 5, 1976.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22 of this title.

§ 5c. Agreements between common carriers by railroad subject to this chapter

(1) Definitions

As used in this section, the term—

(a) "affiliate" means any person directly or indirectly controlling, controlled by, or under common control or ownership with, any other person, and as used in this subdivision, the term (i) "control" has the same meaning as in section 1(3)(b) of this title; and (ii) "ownership" refers to equity holdings of 5 per centum or more in any business entity;

(b) "antitrust laws" means the Act of July 2, 1890, as amended (15 U.S.C. 1, et seq.), the Act of October 15, 1914, as amended (15 U.S.C. 12, et seq.), the Federal Trade Commission Act (15 U.S.C. 41, et seq.), sections 8 and 9 of title 15, and chapter 592 of the Act of June 19, 1936, as amended (15 U.S.C. 13, 13a, 13b, 21a); and

(c) "carrier" means any common carrier by railroad subject to this chapter.

(2) Application to Commission for approval of agreements; rules and regulations; criteria

Any carrier which is a party to an agreement, between or among two or more carriers, relating to rates, fares, classification, divisions, allowances, or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment), or rules and regulations pertaining thereto, or procedures for the joint consideration, initiation, or establishment thereof, shall, under such rules and regulations as the Commission shall prescribe, apply to the Commission for approval of such agreement. The Commission shall, by order, approve any such agreement if approval thereof is not prohibited by paragraph (4) or (5) of this section and if it finds that, by reason of furtherance of the national transportation policy declared in this Act, the relief provided in paragraph (8) of this section should apply with respect to the making and carrying out of such agreement; otherwise the application shall be denied. No such approval shall be granted or continued (a) if any of the terms and conditions which are prescribed under the last sentence of this paragraph are violated or not complied with, or (b) unless the Commission receives a verified written statement (and any written supplement or addendum thereto requested by the Commission) setting forth, with respect to each carrier which is a party to such agreement (i) its name, (ii) the mailing address and telephone number of its headquarter's office, (iii) the names of each of its affiliates, (iv) the names, addresses, and affiliations of each of its officers and directors and of each person who, together with any affiliate, owns or controls any debt, equity, or security interest in it having a value of $1,000,000 or more, and (v) such other information as the Commission directs to be included. The approval of the Commission shall be granted only upon such terms and conditions as the Commission determines are necessary to enable its approval to be granted in accordance with the standard set forth in this paragraph.

(3) Maintenance of accounts and records by conferences, bureaus, committees, etc.; investigative and reporting powers of Commission

Each conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the Commission under the provisions of this section shall maintain such accounts, records, files, and memoranda and shall submit to the Commission such reports, as may be prescribed by the Commission. All such accounts, records, files, and memoranda shall be subject to inspection by the Commission or its duly authorized representatives. The Commission may conduct investigations, make reports, issue subpoenas, conduct hearings, require the production of relevant documents, records, and property, copy and verify the correctness of information subject to inspection, and take depositions (a) to determine

whether any such conference, bureau, committee, or other organization, or any carrier which is a party to any such agreement, has acted or is acting in compliance with the provisions of this section, regulations issued under this section, and the public interest, (b) to determine whether any such organization or carrier is inhibiting an efficient utilization of transportation resources or has established practices which are inconsistent with efficient, flexible, and economic operation, and (c) for such other purposes as the Commission considers appropriate.

(4) Pooling or division agreements

The Commission shall not approve under this section any agreement which it finds is an agreement with respect to a pooling, division, or other matter or transaction to which section 5 of this title is applicable.

(5) Agreements for determining matters through joint consideration; limitations

(a) The Commission shall not approve under this section any agreement which establishes a procedure for the determination of any matter through joint consideration, unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action, without fear of any sanction or retaliatory action, at any time before or after any determination arrived at through such procedure. In no event shall any conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the Commission under the provisions of this section—

(i) permit participation in agreements with respect to, or any voting on, single-line rates, allowances, or charges established by any carrier;

(ii) permit any carrier to participate in agreements with respect to, or to vote on, rates, allowances, or charges relating to any particular interline movement, unless such carrier can practicably participate in such movement; or

(iii) permit, provide for, or establish any procedure for joint consideration or any joint action to protest or otherwise seek the suspension of any rate or classification filed by a carrier of the same mode pursuant to section 15(8) of this title where such rate or classification is established by independent action.

As used in clause (i) of this subdivision, a single-line rate, allowance, or charge is one that is proposed by a single carrier applicable only over its own line and as to which the service (exclusive of terminal services provided by switching, drayage, or other terminal carriers or agencies) can be performed by such carrier.

(b) The limitations set forth in subdivision (a) of this paragraph shall not be applicable to—

(i) general rate increases or decreases, if the agreements accord the shipping public, under specified procedures, adequate notice of at least 15 days of such proposals and an opportunity to present comments thereon, in writing or otherwise, prior to the filing with the Commission of the tariffs containing such increases or decreases, or

(ii) broad tariff changes if such changes are of general application or substantially general application throughout a territory or territories within which such changes are to be applicable.

In any proceeding in which it is alleged that a carrier voted or agreed upon a rate, allowance, or charge, in violation of the provisions of this section, the party alleging such violation shall have the burden of showing that such vote or agreement occurred. A showing of parallel behavior is not, by itself, sufficient to satisfy such burden.

(6) Investigation of prior approved agreements; termination or modification of approval; effective date; review of approval; report to President and Congress; termination or suspension of approval

(a) The Commission is authorized, upon complaint or upon its own initiative without complaint, to investigate and determine whether any agreement previously approved by it under this section, or terms and conditions upon which such approval was granted, is not or are not in conformity with the standards set forth in paragraph (2) of this section and with the public interest, and whether any such terms and conditions are not necessary or whether any additional or modified terms and conditions are necessary for purposes of conformity with such standard. After any such investigation the Commission shall, by order, terminate or modify its approval of such an agreement if it finds such action necessary to insure conformity with such standard, and shall modify the terms and conditions upon which such approval was granted to the extent it finds necessary to insure conformity with such standard or to the extent to which it finds such terms and conditions not necessary to insure such conformity. The effective date of any order terminating or modifying approval, or modifying terms and conditions, shall be postponed for such period as the Commission determines to be reasonably necessary to avoid undue hardship.

(b) The Commission shall periodically, but not less than once every 3 years, review each agreement which the Commission has by order approved under this section to determine whether such agreement, or any conference, bureau, committee, or other organization established or continued pursuant to such agreement, still conforms with the standard set forth in paragraph (2) of this section and the public interest, and to evaluate the success and effect upon the consuming public and the national rail freight transportation system of such agreement and organization. The Commission shall report to the President and to the Congress on the results of such reviews, as part of its annual report pursuant to section 21 of this title. If the Commission makes a determination that any such agreement or organization is no longer in conformity with such standard, the Commission shall by order terminate or suspend its approval thereof.

(7) Hearings

No order shall be entered under this section except after interested parties have been afforded a reasonable opportunity for a hearing.

(8) Relief from operation of antitrust laws

Parties to any agreement approved by the Commission under this section and other persons are, if the approval of such agreement is no[1] prohibited by paragraph (4) or (5) of this section, hereby relieved from the operation of the antitrust laws with respect to the making of such agreement, and with respect to the carrying out of such agreement in conformity with its provisions and in conformity with the terms and conditions prescribed by the Commission.

(9) Applicability of Commission's action

Any action of the Commission under this section (a) in approving an agreement, (b) in denying an application for such approval, (c) in terminating or modifying such approval, (d) in prescribing the terms and conditions upon which such approval is to be granted, or (e) in modifying such terms and conditions, shall be construed as having effect solely with reference to the applicability of the relief provisions of paragraph (8) of this section.

(10) Periodic assessment and report by Federal Trade Commission to Commission regarding agreements, etc.; consultations; availability of report

The Federal Trade Commission, in consultation with the Antitrust Division of the Department of Justice, shall periodically prepare an assessment of, and shall report to the Commission on (a) any possible anticompetitive features of (i) any agreements approved or submitted for approval under this section, and (ii) any conferences, bureaus, committees, or other organizations operating under such agreements, and (b) possible ways to eliminate or alleviate any such anticompetitive features, effects, or aspects in a manner that will further the goals of the national transportation policy and this Act. The Commission shall make such reports available to the public.

(11) Time for final disposition of rule, rate or charge docketed with conferences, bureaus, committees, etc.

Any conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the Commission under this section shall make a final disposition with respect to any rule, rate, or charge docketed with such organization within 120 days after such proposal is docketed.

(Feb. 4, 1887, ch. 104, part I, § 5b, as added Feb. 5, 1976, Pub. L. 94-210, title II, § 208(b), 90 Stat. 42, and amended Oct. 19, 1976, Pub. L. 94-555, title II, § 220(k), 90 Stat. 2630.)

REFERENCES IN TEXT

Act of July 2, 1890, as amended (15 U.S.C. § 1 et seq.), referred to in par. (1)(b), is act July 2, 1890, ch. 647, 26 Stat. 209, known as the Sherman Act, which enacted sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables volume.

Act of October 15, 1914, as amended (15 U.S.C. 12, et seq.), referred to in par. (1)(b), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of Title 15, Commerce and Trade, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables volume.

The Federal Trade Commission Act (15 U.S.C. 41, et seq.), referred to in par. (1)(b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables volume.

Chapter 592 of the Act of June 19, 1936, as amended (15 U.S.C. 13, 13a, 13b, 21a), referred to in par. (1)(b), means act June 19, 1936, ch. 592, 49 Stat. 1526, as amended, popularly known as the Robinson-Patman Antidiscrimination Act, which enacted sections 13a, 13b, and 21a of Title 15, Commerce and Trade, and amended section 13 of Title 15. For complete classification of this Act to the Code, see Tables volume.

This Act, referred to in pars. (2) and (10), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 1 et seq.) and chapters 8, 12, 13, and 19 (§§ 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

AMENDMENTS

1976—Par. (5)(a)(iii). Pub. L. 94-555 substituted "section 15(8)" for "section 15(7)" following "mode pursuant to".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-555 effective on October 1, 1976, see section 303 of Pub. L. 94-555, set out as an Effective Date of 1976 Amendment note under section 543 of Title 45, Railroads.

CONGLOMERATE STUDY BY COMMISSION; CONSIDERATIONS; SUBMISSION DATE OF REPORT

Section 903 of Pub. L. 94-210 authorized the Commission to study corporate structures within the rail transportation industry to determine what effects certain aspects of national transportation have upon effective transportation, competition, revenue levels and various other areas and to report to Congress on its study within one year after Feb. 5, 1976.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22 of this title.

§ 6. Schedules and statements of rates, etc., joint rail and water transportation

(1) Schedule of rates, fares, and charges; filing and posting

Every common carrier subject to the provisions of this chapter shall file with the Commission created by this chapter and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print, and keep open to public inspection, as aforesaid, the separately established rates, fares, and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and

[1] So in original. Probably should be "not".

all other charges which the Commission may require, all privileges or facilities granted or allowed, and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this chapter.

(2) Schedule of rates through foreign country

Any common carrier subject to the provisions of this chapter receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States the through rate on which shall not have been made public, as required by this chapter, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production.

(3) Change in rates, fares, etc.; notice required; simplification of schedules

No change shall be made in the rates, fares, and charges or joint rates, fares, and charges which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days' notice to the Commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection: *Provided*, That the Commission may, in its discretion and for good cause shown, allow changes upon less than the notice herein specified, or modify the requirements of this section in respect to publishing, posting, and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions: *Provided further*, That the Commission is authorized to make suitable rules and regulations for the simplification of schedules of rates, fares, charges, and classifications and to permit in such rules and regulations the filing of an amendment of or change in any rate, fare, charge, or classification without filing complete schedules covering rates, fares, charges, or classifications not changed if, in its judgment, not inconsistent with the public interest.

(4) Joint tariffs

The names of the several carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the Commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the Commission, and where such evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties.

(5) Copies of traffic contracts to be filed

Every common carrier subject to this chapter shall also file with said Commission copies of all contracts, agreements, or arrangements, with other common carriers in relation to any traffic affected by the provisions of this chapter to which it may be a party: *Provided, however*, That the Commission, by regulations, may provide for exceptions from the requirements of this paragraph in the case of any class or classes of contracts, agreements, or arrangements, the filing of which, in its opinion, is not necessary in the public interest.

(6) Form and manner of publishing, filing, and posting schedules; incorporation of rates into individual tariffs; time for incorporation; rejection of schedules; unlawful use

The schedules required by this section to be filed shall be published, filed, and posted in such form and manner as the Commission by regulation shall prescribe. The Commission shall, beginning 2 years after February 5, 1976, require (a) that all rates shall be incorporated into the individual tariffs of each common carrier by railroad subject to this chapter or rail ratemaking association within 2 years after the initial publication of the rate, or within 2 years after a change in any rate is approved by the Commission, whichever is later, and (b) that any rate shall be null and void with respect to any such carrier or association which does not so incorporate such rate into its individual tariff. The Commission may, upon good cause shown, extend such period of time. Notice of any such extension and a statement of the reasons therefor shall be promptly transmitted to the Congress. The Commission is authorized to reject any schedule filed with it which is not in accordance with this section and with such regulations. Any schedule so rejected by the Commission shall be void and its use shall be unlawful.

(7) Transportation without filing and publishing rates forbidden; rebates; privileges

No carrier, unless otherwise provided by this chapter, shall engage or participate in the transportation of passengers or property, as defined in this chapter, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this chapter; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier

refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs.

(8) Preference to shipments for United States

In time of war or threatened war preference and precedence shall, upon demand of the President of the United States, be given, over all other traffic, for the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic. And in time of peace shipments consigned to agents of the United States for its use shall be delivered by the carriers as promptly as possible and without regard to any embargo that may have been declared, and no such embargo shall apply to shipments so consigned.

(9) Schedule lacking notice of effective date

The Commission may reject and refuse to file any schedule that is tendered for filing which does not provide and give lawful notice of its effective date, and any schedule so rejected by the Commission shall be void and its use shall be unlawful.

(10) Penalty for failure to comply with regulations

In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with the terms of any regulation adopted and promulgated or any order made by the Commission under the provisions of this section, such carrier, receiver, or trustee shall be liable to a penalty of $500 for each such offense, and $25 for each and every day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

(11) Jurisdiction of Commission over transportation by rail and water

When property may be or is transported from point to point in the United States by rail and water through the Panama Canal or otherwise, the transportation being by a common carrier or carriers, and not entirely within the limits of a single State, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction otherwise given by this chapter:

(a) To establish physical connection between the lines of the rail carrier and the dock at which interchange of passengers or property is to be made by directing the rail carrier to make suitable connection between its line and a track or tracks which have been constructed from the dock to the limits of the railroad right-of-way, or by directing either or both the rail and water carrier, individually or in connection with one another to construct and connect with the lines of the rail carrier a track or tracks to the dock. The Commission shall have full authority to determine and prescribe the terms and conditions upon which these connecting tracks shall be operated, and it may, either in the construction or the operation of such tracks, determine what sum shall be paid to or by either carrier: *Provided*, That construction required by the Commission under the provisions of this paragraph shall be subject to the same restrictions as to findings of public convenience and necessity and other matters as is construction required under section 1 of this title.

(b) To establish proportional rates or maximum, or minimum, or maximum and minimum proportional rates, by rail to and from the ports to which the traffic is brought, or from which it is taken by the water carrier, and to determine to what traffic and in connection with what vessels and upon what terms and conditions such rates shall apply. By proportional rates are meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water.

(12) Jurisdiction of Commission over carriers contracting with water carriers operating to foreign ports

If any common carrier subject to this Act enters into arrangements with any water carrier operating from a port in the United States to a foreign country, through the Panama Canal or otherwise, for the handling of through business between interior points of the United States and such foreign country, the Commission may by order require such common carrier to enter into similar arrangements with any or all other lines of steamships operating from said port to the same foreign country.

(Feb. 4, 1887, ch. 104, pt. I, § 6, 24 Stat. 380; Mar. 2, 1889, ch. 382, § 1, 25 Stat. 855; June 29, 1906, ch. 3591, § 2, 34 Stat. 586; June 18, 1910, ch. 309, § 9, 36 Stat. 548; Aug. 24, 1912, ch. 390, § 11, 37 Stat. 568; Aug. 29, 1916, ch. 417, 39 Stat. 604; Feb. 28, 1920, ch. 91, §§ 409–413, 41 Stat. 483; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Sept. 18, 1940, ch. 722, title I, § 8, 54 Stat. 910; Aug. 2, 1949, ch. 379, § 5, 63 Stat. 486; Feb. 5, 1976, Pub. L. 94–210, title II, § 209, 90 Stat. 45.)

REFERENCES IN TEXT

This Act, referred to in par. (12), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 1 et seq.) and chapters 8, 12, 13, and 19 (§§ 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

AMENDMENTS

1976—Par. (6). Pub. L. 94-210 added provisions relating to time, etc., requirements for incorporating rates into individual tariffs.

1949—Par. (5). Act Aug. 2, 1949, added proviso to give Commission discretion in not requiring copies of certain instruments.

1940—Par. (6). Act Sept. 18, 1940, § 8(a), amended par. (6).

Par. (11). Act Sept. 18, 1940, § 8(b), (c), struck out par. (11) and redesignated par. (13) and (11) and as so redesignated repealed subpars. (b) and (d).

Par. (12). Act Sept. 18, 1940, § 8(b), (c), struck out par. (12) and enacted provisions set out as par. (12).

Former par. (13) redesignated "(11)" and amended by act Sept. 18, 1940, § 8(c).

1935—Act Aug. 9, 1935, substituted "this part", which has been translated "this chapter", for "this Act", meaning act Feb. 4, 1887, known as the Interstate Commerce Act.

CONTINUATION OF PROVISIONS OF PAR. (8) UNTIL 6 MONTHS AFTER TERMINATION OF NATIONAL EMERGENCY

Act July 31, 1953, ch. 292, 67 Stat. 244, provided that: "The provisions of the eighth paragraph (designated 'Military traffic in time of war') of section 6 of the Act of February 4, 1887 (ch. 104, 24 Stat. 380), as that section was amended by section 2 of the Act of June 29, 1906 (ch. 3591, 34 Stat. 586), as amended [par. 8 of this section], and as extended by section 1(a)(24), Emergency Powers Continuation Act (Public Law 450, Eighty-second Congress [act July 3, 1952, ch. 570, 66 Stat. 332]) shall remain in full force and effect until six months after the termination of the national emergency proclaimed by the President on December 16, 1950 (Proclamation 2914, 3 C.F.R. 71 [Proc. No. 2914, Dec. 16, 1950, 15 F.R. 9029, 64 Stat. A454, set out preceding section 1 of Title 50, Appendix, War and National Defense]), or until such earlier date as the Congress by concurrent resolution declares that it is no longer necessary to exercise the powers continued in force and effect by this Act, notwithstanding any limitation by reference to war or threatened war of the time during which the powers and authorizations therein granted may be exercised."

CONTINUATION OF PROVISIONS UNTIL AUGUST 1, 1953

Act June 30, 1953, ch. 172, 67 Stat. 132, and act Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18, as amended by act July 3, 1952, ch. 570, 66 Stat. 332, referred to in a note below, extended the time limitation on the effectiveness of the provisions of par. (8) of this section from Apr. 1, 1953 to Aug. 1, 1953.

REPEAL OF PRIOR ACTS CONTINUING PAR. (8)

Section 6 of act July 3, 1952, repealed act Apr. 14, 1952, ch. 204, 66 Stat. 54, as amended by acts May 28, 1952, ch. 339, 66 Stat. 96; June 14, 1952, ch. 437, 66 Stat. 137; June 30, 1952, ch. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal took effect as of June 16, 1952, by section 7 of act July 3, 1952.

CROSS REFERENCES

Inclusion of statement of through service and joint rates under Federal Aviation Act of 1958, see section 1483 of this title.

Proceedings for obtaining, service and enforcement, and terms of orders, see section 51 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22, 51 of this title; title 43 section 942-1.

§ 7. Combinations to prevent continuous carriage of freight prohibited

It shall be unlawful for any common carrier subject to the provisions of this chapter to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this chapter.

(Feb. 4, 1887, ch. 104, pt. I, § 7, 24 Stat. 382; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543.)

AMENDMENTS

1935—Act Aug. 9, 1935, substituted "this part", which has been translated as "this chapter," for "this Act", meaning act Feb. 4, 1887, known as the Interstate Commerce Act.

§ 8. Liability in damages to persons injured by violation of law

In case any common carrier subject to the provisions of this chapter shall do, cause to be done, or permit to be done any act, matter, or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this chapter required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this chapter, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

(Feb. 4, 1887, ch. 104, pt. I, § 8, 24 Stat. 382; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543.)

AMENDMENTS

1935—Act Aug. 9, 1935, substituted "this part", which has been translated as "this chapter", for "this Act", meaning act Feb. 4, 1887, known as the Interstate Commerce Act.

§ 9. Remedies of persons damaged; election; witnesses

Any person or persons claiming to be damaged by any common carrier subject to the provisions of this chapter may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this chapter in any district court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit.

(Feb. 4, 1887, ch. 104, pt. I, § 9, 24 Stat. 382; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Oct. 15, 1970, Pub. L. 91-452, title II, § 243(a), 84 Stat. 931.)

AMENDMENTS

1970—Pub. L. 91-452 struck out the provisions that the claim that any compelled testimony or evidence which tends to criminate the person giving such evidence would not excuse such witness from testifying, but that such evidence or testimony would not be used against such person on the trial of any criminal proceeding.

1935—Act Aug. 9, 1935, substituted "this part", which has been translated as "this chapter", for "this Act", meaning act Feb. 4, 1887, known as the Interstate Commerce Act.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISIONS

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

CROSS REFERENCES

Immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

§ 10. Violation of regulations by carrier; discrimination; penalties

(1) Violation by carrier or officer; penalty

Any common carrier subject to the provisions of this chapter, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this chapter prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this chapter required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this chapter to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this chapter for which no penalty is otherwise provided, or who shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed $5,000 for each offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges for the transportation of passengers or property, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

(2) False billing or classification by carrier; penalty

Any common carrier subject to the provisions of this chapter, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding $5,000, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.

(3) Obtaining lower rates by false billing, etc., or by false claim; penalty

Any person, corporation, or company, or any agent or officer thereof, who shall deliver property for transportation to any common carrier subject to the provisions of this chapter, or for whom, as consignor or consignee, any such carrier shall transport property, who shall knowingly and willfully, directly, or indirectly, himself or by employee, agent, officer, or otherwise, by false billing, false classification, false weighing, false representation of the contents of the package or the substance of the property, false report of weight, false statement, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent, or officer, obtain or attempt to obtain transportation for such property at less than the regular rates than established and in force on the line of transportation; or who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false statement or representation as to cost, value, nature, or extent of injury, or by the use of any false bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to be false, fictitious, or fraudulent, or to contain any false, fictitious, or fraudulent statement or entry, obtain or attempt to obtain any allowance, refund, or payment for damage or otherwise in connection with or growing out of the transportation of or agreement to transport such property, whether with or without the consent or connivance of the carrier, whereby the compensation of such carrier for such transportation, either before or after payment, shall in fact be made less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was wholly or in part committed, be subject for each offense to a fine of not exceeding $5,000 or imprisonment in the penitentiary for a term of not exceeding two years, or both in the discretion of the court: *Provided*, That the penalty of imprisonment shall not apply to artificial persons.

(4) Inducing unjust discrimination; penalty; liability for damages

If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce or attempt to induce any common carrier subject to the provisions of this chapter, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person or such officer or agent of such corporation or company shall be deemed guilty of a misdemeanor, and

shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding $5,000, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom.

(Feb. 4, 1887, ch. 104, pt. I, § 10, 24 Stat. 382; Mar. 2, 1889, ch. 382, § 2, 25 Stat. 857; June 18, 1910, ch. 309, § 10, 36 Stat. 549; Feb. 28, 1920, ch. 91, § 414, 41 Stat. 483; June 19, 1934, ch. 652, § 602(b), 48 Stat. 1102; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543.)

AMENDMENTS

1935—Act Aug. 9, 1935, substituted "this part", which has been translated as "this chapter", for "this Act" meaning act Feb. 4, 1887, known as the Interstate Commerce Act.

1934—Par. (1). Act June 19, 1934, struck out provisions subjecting an offender to imprisonment for the transmission of intelligence by wire or wireless communication. See now section 151 et seq. of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

CROSS REFERENCES

Felony as offense punishable by imprisonment for term exceeding one year, see section 1 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20, 22 of this title.

§ 11. Interstate Commerce Commission; appointment, term, and qualifications of Commissioners

A commission is created and established to be known as the Interstate Commerce Commission, which shall be composed of eleven Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioners appointed under this chapter and their successors, shall continue in office for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he shall succeed. Of the Commissioners in office on January 1, 1926, the term of one shall expire December 31 in each of the years 1926, 1927, and 1932 and the terms of two shall expire December 31, in each of the years 1928, 1929, 1930, and 1931. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than six of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this chapter, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said Commissioners shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission. Upon the expiration of his term of office a Commissioner shall continue to serve until his successor is appointed and shall have qualified.

(Feb. 4, 1887, ch. 104, pt. I, §§ 11, 24, 24 Stat. 383, 387; June 29, 1906, ch. 3591, § 8, 34 Stat. 595; Aug. 9, 1917, ch. 50, § 1, 40 Stat. 270; Feb. 28, 1920, ch. 91, § 440, 41 Stat. 497; July 16, 1935, ch. 383, 49 Stat. 481; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543.)

AMENDMENTS

1935—Act Aug. 9, 1935, substituted "this part", which has been translated as "this chapter", for "this Act", meaning act Feb. 4, 1887, known as the Interstate Commerce Act.

Act July 16, 1935, added last sentence relating to the continuance in office of a Commissioner until his successor is appointed and has qualified.

COMPENSATION OF CHAIRMAN AND MEMBERS OF INTERSTATE COMMERCE COMMISSION

Compensation of chairman and members, see sections 5314(23) and 5315(62) of Title 5, Government Organization and Employees.

REORGANIZATION PLAN NO. 1 OF 1969

Eff. Oct. 11, 1969, 34 F.R. 15783, 83 Stat. 859

Prepared by the President and Transmitted to the Senate and the House of Representatives in Congress Assembled, July 22, 1969, Pursuant to the Provisions of Chapter 9 of Title 5 of the United States Code.

INTERSTATE COMMERCE COMMISSION

SECTION 1. TRANSFER OF FUNCTIONS TO THE CHAIRMAN

(a) Subject to the provisions of subsection (b) of this section, there are hereby transferred from the Interstate Commerce Commission, hereinafter referred to as the Commission, to the Chairman of the Commission, hereinafter referred to as the Chairman, the executive and administrative functions of the Commission, including functions of the Commission with respect to (1) the appointment and supervision of personnel employed under the Commission, (2) the distribution of business among such personnel and among administrative units of the Commission, and (3) the use and expenditure of funds.

(b)(1) In carrying out any of his functions under the provisions of this section the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(2) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

(3) Personnel employed regularly and full time in the immediate offices of commissioners other than the Chairman shall not be affected by the provisions of this reorganization plan.

(4) Requests for regular, supplemental, or deficiency appropriations for the Commission (prepared by or under the Chairman in pursuance of section 214 of the Budget and Accounting Act, 1921, as amended (31 U.S.C. 22) and as affected by this reorganization plan) shall require the approval of the Commission prior to the submission of the requests to the Bureau of the Budget [now the Office of Management and Budget] by the Chairman.

(5) There are hereby reserved to the Commission its functions with respect to determining upon the distribution of appropriated funds according to major programs and purposes.

SEC. 2. PERFORMANCE OF TRANSFERRED FUNCTIONS

The Chairman may from time to time make such provisions as he shall deem appropriate authorizing

the performance by any officer, employee, or administrative unit under his jurisdiction of any function transferred to the Chairman by the provisions of section 1 of this reorganization plan.

SEC. 3. DESIGNATION OF CHAIRMAN

(a) The function of the Commission of choosing the Chairman from among the commissioners composing the Commission is hereby transferred to the President of the United States.

(b) Nothing in this reorganization plan shall preclude the Commission from designating a commissioner to be the acting chairman of the Commission and to perform the functions of the Chairman during any period of time when (by reason of death, resignation, or other cause) no Presidentially designated Chairman is available to perform them.

SEC. 4. TAKING EFFECT

Section 3 of this reorganization plan shall take effect on the first day of January, 1970, and the other sections hereof shall take effect on the date determined under section 906(a) of Title 5 of the United States Code.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

The Interstate Commerce Commission, oldest of the Federal regulatory agencies, has jurisdiction over 17,000 carriers—rail and motor, water and pipeline, express companies and freight forwarders. Its decisions help shape the scope and character of the Nation's transportation system.

But, as important as the Commission is, as extensive as its jurisdiction is, it is hampered by:

1. Lack of continuity

The Chairman of the Commission serves only a year, selected by annual rotation from among the eleven Commissioners. In no other major Federal regulatory agency is the President without the power to designate the Chairman.

2. Lack of leadership

The Chairman does not have vested in him by law the executive and administrative functions of the Commission. As a result there is no firm and clear legal responsibility for the management of the Commission's day-to-day affairs.

To change this situation, I am sending to the Congress today Reorganization Plan No. 1 of 1969, prepared in accordance with chapter 9 of title 5 of the United States Code.

1. Continuity

The Chairman of the Interstate Commerce Commission is the Commission's spokesman, its key link to other agencies and the industry, the supervisor of its staff, and director of its internal operations. Yet today, despite the need for sustained leadership, the Chairman of this agency serves only one year. I know of no modern business that would tolerate the practice of annually rotating its chief executive.

To provide the necessary continuity of leadership in the conduct of the Commission's administrative affairs, I propose that the President be authorized to designate the Chairman of the Commission from among its members. This principle of good management has already been taken with respect to most other major Federal regulatory agencies. The time has come to apply it to the Interstate Commerce Commission.

2. Leadership

The administrative powers of the Chairman must be strengthened.

In 1961, the Commission delegated its administrative powers to its Chairman. However, unless and until the administrative powers are vested in the Chairman by law, statutory authority will remain dispersed among the Commissioners.

Almost 20 years ago the Hoover Commission emphasized that "Administration by a plural executive is universally regarded as inefficient." It then recommended that all administrative responsibility be assigned the chairmen of these regulatory agencies.

That recommendation is as sound today as it was then. It has already been applied to almost every other major Federal regulatory agency. I propose that administrative authority be vested in the Chairman of the Interstate Commerce Commission.

In sum, the reorganization plan provides continuity of leadership and vests responsibility for internal administrative functions in a chairman designated by the President, with safeguards to ensure that the Commission retains full control over policy and the direction of its regulatory programs. This does not affect the statutory provisions governing the exercise of quasi-legislative and quasi-judicial powers by the Commission and its employees to whom it has delegated the responsibility of hearing and deciding cases.

Each reorganization included in the plan is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code. In particular, the plan is responsive to section 901(a)(1), "to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business;" and section 901(a)(3), "to increase the efficiency of the operations of the Government to the fullest extent practicable." This plan will help achieve those ends.

This plan should result in more efficient operation of the Commission. To itemize or aggregate resulting expenditure reductions under the plan is not practicable. I shall continue to explore other ways to make the Commission structure more effective.

I strongly recommend that the Congress permit this necessary reorganization plan to become effective.

RICHARD NIXON.

THE WHITE HOUSE, July 22, 1969.

CROSS REFERENCES

Joint board under part II of the Interstate Commerce Act, see section 305 of this title.

§ 12. Authority and duties of Commission; witnesses; depositions

(1) Authority, duties, and proceedings of Commission; witnesses; exemption from applicability of chapter for persons, class of persons, etc.; procedures for establishment and revocation

(a) The Commission shall have authority, in order to perform the duties and carry out the objects for which it was created, to inquire into and report on the management of the business of all common carriers subject to the provisions of this chapter, and to inquire into and report on the management of the business of persons controlling, controlled by, or under a common control with, such carriers, to the extent that the business of such persons is related to the management of the business of one or more such carriers, and the Commission shall keep itself informed as to the manner and method in which the same are conducted. The Commission may obtain from such carriers and persons such information as the Commission deems necessary to carry out the provisions of this chapter; and may transmit to Congress from time to time such recommendations (including recommendations as to additional legislation) as the Commission may deem necessary. The Commission is authorized and required to execute and enforce the provisions of this chapter; and, upon the request of the Commission, it shall be the duty of any United States attorney

to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States all necessary proceedings for the enforcement of the provisions of this chapter and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this chapter the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

(b) Whenever the Commission determines, upon petition by the Secretary or an interested party or upon its own initiative, in matters relating to a common carrier by railroad subject to this chapter, after notice and reasonable opportunity for a hearing, that the application of the provisions of this chapter (i) to any person or class of persons, or (ii) to any services or transactions by reason of the limited scope of such services or transactions, is not necessary to effectuate the national transportation policy declared in this Act, would be an undue burden on such person or class of persons or on interstate and foreign commerce, and would serve little or no useful public purpose, it shall, by order, exempt such persons, class of persons, services, or transactions from such provisions to the extent and for such period of time as may be specified in such order. The Commission may, by order, revoke any such exemption whenever it finds, after notice and reasonable opportunity for a hearing, that the application of the provisions of this chapter to the exempted person, class of persons, services, or transactions, to the extent specified in such order, is necessary to effectuate the national transportation policy declared in this Act and to achieve effective regulation by the Commission, and would serve a useful public purpose.

(2) Attendance of witnesses and production of documents

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission, or any party to a proceeding before the commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

(3) Compelling attendance and testimony of witnesses, etc.

And any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this chapter, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(4) Depositions

The testimony of any witness may be taken, at the instance of a party, in any proceeding or investigation depending[1] before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any judge of any court of the United States, or any United States commissioner, or any clerk of a district court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common please of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

(5) Oath; subscription of testimony on deposition

Every person deposing as herein provided shall be cautioned and sworn (or affirm, if he so request) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

(6) Deposition in foreign country; filing of depositions

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission.

(7) Fees for depositions

Witnesses whose depositions are taken pursuant to this chapter, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(Feb. 4, 1887, ch. 104, pt. I, § 12, 24 Stat. 383; Mar. 2, 1889, ch. 382, § 3, 25 Stat. 858; Feb. 10, 1891, ch. 128, 26 Stat. 743; May 28, 1896, ch. 252, § 19, 29 Stat. 184; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Feb. 28, 1920, ch. 91, § 415, 41 Stat. 484; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Sept. 18, 1940, ch. 722, title I, § 9(a), 54 Stat. 910; June 25, 1948, ch. 646, § 1, 62 Stat. 909; Feb. 5, 1976, Pub. L. 94-210, title II, § 207, 90 Stat. 42.)

[1] So in original. Probably should read "pending".

REFERENCES IN TEXT

This Act, referred to in par. (1)(b), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 1 et seq.) and chapters 8, 12, 13, and 19 §§ 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

AMENDMENTS

1976—Par. (1). Pub. L. 94-210 designated existing provision as subd. (a) and added subd. (b).

1940—Par. (1). Act Sept. 18, 1940, amended par. (1).

1935—Act Aug. 9, 1935, substituted "this part", which has been translated as "this chapter", for "this Act" meaning act Feb. 4, 1887, known as the Interstate Commerce Act.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorney" for "district attorney of the United States". See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision note thereunder.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to the Interstate Commerce Commission and its Chairman, see Parts 1, 21, and 30 of Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, set out under section 2292 of Title 50, Appendix, War and National Defense.

FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see rule 45, Title 28, Appendix, Judiciary and Judicial Procedure.

CROSS REFERENCES

Authority and duties of Commission under Railroad Reorganization Act of 1933, see section 205 of Title 11, Bankruptcy.

Control as used in par. (1) of this section defined, see section 1(3) of this title.

Enforcement by Interstate Commerce Commission, with respect to any common carrier subject to Acts regulating commerce, of requirements imposed under section 1601 et seq. of Title 15, Commerce and Trade, see section 1607 of Title 15.

Provisions of this section relating to the attendance and testimony of witnesses and the production of documentary evidence as applicable under the Commodity Exchange Act, see section 15 of Title 7, Agriculture.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 916, 1017, 1655 of this title; title 7 section 15.

§ 13. Complaints to and investigations by Commission

(1) Complaint to Commission of violation of law by carrier; reparation; investigation

Any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier complaining of anything done or omitted to be done by any common carrier subject to the provisions of this chapter in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

(2) Complaints by State commissions; inquiry on Commission's own motion; expenses of State commissions

Said Commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission or any State or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this chapter, or concerning which any question may arise under any of the provisions of this chapter, or relating to the enforcement of any of the provisions of this chapter. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its motion as though it had been appealed to by complaint or petition under any of the provisions of this chapter, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant. Representatives of State commissions sitting with the Commission, under the provisions of this section, in cases pending before the Commission, shall receive such allowances for travel and subsistence expense as the Commission shall provide.

(3) Investigation involving State regulations; conference of State and interstate commissions

Whenever in any investigation under the provisions of this chapter, or in any investigation instituted upon petition of the carrier concerned, which petition is authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this chapter or chapter 12 of this title with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from

time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this chapter or chapter 12 of this title.

(4) Duty of Commission where State regulations result in discrimination

Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against, or undue burden on, interstate or foreign commerce (which the Commission may find without a separation of interstate and intrastate property, revenues, and expenses, and without considering in totality the operations or results thereof of any carrier, or group or groups of carriers wholly within any State), which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, discrimination, or burden. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

(5) Exclusive authority to determine and prescribe intrastate rates; prerequisites; procedures

The Commission shall have exclusive authority, upon application to it, to determine and prescribe intrastate rates if—

(a) a carrier by railroad has filed with an appropriate administrative or regulatory body of a State, a change in an intrastate rate, fare, or charge, or a change in a classification, regulation, or practice that has the effect of changing such a rate, fare, or charge, for the purpose of adjusting such rate, fare, or charge to the rate charged on similar traffic moving in interstate or foreign commerce; and

(b) the State administrative or regulatory body has not, within 120 days after the date of such filing, acted finally on such change.

Notice of the application to the Commission shall be served on the appropriate State administrative or regulatory body. Upon the filing of such an application, the Commission shall determine and prescribe, according to the standards set forth in paragraph (4) of this section, the rate thereafter to be charged. The provisions of this paragraph shall apply notwithstanding the laws or constitution of any State, or the pendency of any proceeding before any State court or other State authority. Nothing in this paragraph shall affect the authority of the Commission to institue[1] an investigation or to act in such investigation as provided in paragraphs (3) and (4) of this section.

(6) Petition for commencement of proceeding for issuance, amendment, or repeal of order, etc., relating to common carriers by railroads; grant or denial; judicial review; limitations; definition

(a) Whenever, pursuant to section 553(e) of title 5, an interested person (including a government entity) petitions the Commission for the commencement of a proceeding for the issuance, amendment, or repeal of an order, rule, or regulation relating to common carriers by railroads under this Act, the Commission shall grant or deny such petition within 120 days after the date of receipt of such petition. If the Commission grants such a petition, it shall commence an appropriate proceeding as soon thereafter as practicable. If the Commission denies such a petition, it shall set forth, and publish in the Federal Register, its reasons for such denial.

(b) If the Commission denies a petition under subdivision (a) (or if it fails to act thereon within the 120-day period established by such subdivision), the petitioner may commence a civil action in an appropriate court of appeals of the United States for an order directing the Commission to initiate a proceeding to take the action requested in such petition. Such an action shall be commenced within 60 days after the date of such denial or, where appropriate, within 60 days after the date of expiration of such 120-day period.

(c) If the petitioner, in an action commenced under subdivision (b), demonstrates to the satisfaction of the court, by a preponderance of the evidence in the record before the Commission or, in an action based on a petition on which the Commission failed to act, in a new proceeding before such court, that the action requested in such petition to the Commission is necessary and that the failure of the Commission to take such action will result in the continuation of practices which are not consistent with the public interest or in accordance with this Act, such court shall order the Commission to initiate such action.

(d) In any action under this paragraph, a court shall have no authority to compel the Commission to take any action other than the initiation of a proceeding for the issuance, amendment, or repeal of an order, rule, or regulation under this Act.

(e) As used in this paragraph, the term "Commission" includes any division, individual Commissioner, administrative law judge, employee board, or any other person authorized to act on behalf of the Commission in any part of the proceeding for the issuance, amendment, or repeal of any order, rule, or regulation under this Act relating to common carriers by railroad.

(Feb. 4, 1887, ch. 104, pt. I, § 13, 24 Stat. 383; June 18, 1910, ch. 309, § 11, 36 Stat. 550; Feb. 28, 1920, ch. 91, § 416, 41 Stat. 484; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Sept. 18, 1940, ch. 722, title I, § 9(b), (c), 54 Stat. 910; Aug. 12, 1958, Pub. L.

[1] So in original. Probably should read "institute".

85-625, § 4, 72 Stat. 570; Feb. 5, 1976, Pub. L. 94-210, title II, § 210, title III, § 304(b), 90 Stat. 46, 52; Oct. 19, 1976, Pub. L. 94-555, title II, § 220(*l*), 90 Stat. 2630.)

REFERENCES IN TEXT

This Act, referred to in par. (6)(a), (c), (d), (e), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 1 et seq.) and chapters 8, 12, 13, and 19 (§§ 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

AMENDMENTS

1976—Par. (4). Pub. L. 94-210, § 210, struck out proviso relating to investigation following filing of petition authorized under par. (3) with respect to lawfulness of rate, fare, charge, etc.

Par. (5). Pub. L. 94-555 added provision relating to authority of Commission to institute or act in an investigation under pars. (3) and (4) following "other state authority".

Pub. L. 94-210, § 210, added par. (5).

Par. (6). Pub. L. 94-210, § 304(b), added par. (6).

1958—Par. (4). Pub. L. 85-625 permitted the Commission to prescribe rates when it determines that any rate, fare, charge, classification, regulation or practice causes an undue burden on interstate or foreign commerce, required the Commission to start an investigation upon the filing of a petition whether or not the rates, fares or charges have theretofore been considered by any State agency or authority and without regard to the pendency of any State proceeding thereon, and authorized the Commission to make findings without a separation of interstate and intrastate property, revenues, and expenses, and without considering in totality the operations or results thereof of any carrier, or group or groups of carriers wholly within any State.

1940—Par. (2). Act Sept. 18, 1940, § 9(b), added last sentence.

Par. (3). Act Sept. 18, 1940, § 9(c), amended par. (3).

1935—Act Aug. 9, 1935, substituted "this part", which has been translated as "this chapter", for "this Act", meaning act Feb. 4, 1887, known as the Interstate Commerce Act.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-555 effective on October 1, 1976, see section 303 of Pub. L. 94-555, set out as an Effective Date of 1976 Amendment note under section 543 of Title 45, Railroads.

CROSS REFERENCES

Failure of carrier or officer to obey orders, penalty, see section 16 of this title.

Switch connection and tracks, complaints to Commission, see section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 15, 15a, 16, 1655 of this title; title 45 section 561.

§ 13a. Discontinuance or change of the operation or service of trains or ferries; notice; investigation; hearing; determination

(1) A carrier or carriers subject to this chapter, if their rights with respect to the discontinuance or change, in whole or in part, of the operation or service of any train or ferry operating from a point in one State to a point in any other State or in the District of Columbia, or from a point in the District of Columbia to a point in any State, are subject to any provision of the constitution or statutes of any State or any regulation or order of (or are the subject of any proceeding pending before) any court or an administrative or regulatory agency of any State, may, but shall not be required to, file with the Commission, and upon such filing shall mail to the Governor of each State in which such train or ferry is operated, and post in every station, depot or other facility served thereby, notice at least thirty days in advance of any such proposed discontinuance or change. The carrier or carriers filing such notice may discontinue or change any such operation or service pursuant to such notice except as otherwise ordered by the Commission pursuant to this paragraph, the laws or constitution of any State, or the decision or order of, or the pendency of any proceeding before, any court or State authority to the contrary notwithstanding. Upon the filing of such notice the Commission shall have authority during said thirty days' notice period, either upon complaint or upon its own initiative without complaint, to enter upon an investigation of the proposed discontinuance or change. Upon the institution of such investigation, the Commission, by order served upon the carrier or carriers affected thereby at least ten days prior to the day on which such discontinuance or change would otherwise become effective, may require such train or ferry to be continued in operation or service, in whole or in part, pending hearing and decision in such investigation, but not for a longer period than four months beyond the date when such discontinuance or change would otherwise have become effective. If, after hearing in such investigation whether concluded before or after such discontinuance or change has become effective, the Commission finds that the operation or service of such train or ferry is required by public convenience and necessity and will not unduly burden interstate or foreign commerce, the Commission may by order require the continuance or restoration of operation or service of such train or ferry, in whole or in part, for a period not to exceed one year from the date of such order. The provisions of this paragraph shall not supersede the laws of any State or the orders or regulations of any administrative or regulatory body of any State applicable to such discontinuance or change unless notice as in this paragraph provided is filed with the Commission. On the expiration of an order by the Commission after such investigation requiring the continuance or restoration of operation or service, the jurisdiction of any State as to such discontinuance or change shall no longer be superseded unless the procedure provided by this paragraph shall again be invoked by the carrier or carriers.

(2) Where the discontinuance or change, in whole or in part, by a carrier or carriers subject to this chapter, of the operation or service of any train or ferry operated wholly within the boundaries of a single State is prohibited by the constitution or statutes of any State or where the State authority having jurisdiction thereof shall have denied an application or petition duly filed with it by said carrier or carriers for authority to discontinue or change, in whole or in part, the operation or service of any such train or ferry or shall not have acted finally on such an application or petition within one

hundred and twenty days from the presentation thereof, such carrier or carriers may petition the Commission for authority to effect such discontinuance or change. The Commission may grant such authority only after full hearing and upon findings by it that (a) the present or future public convenience and necessity permit of such discontinuance or change, in whole or in part, of the operation or service of such train or ferry, and (b) the continued operation or service of such train or ferry without discontinuance or change, in whole or in part, will constitute an unjust and undue burden upon the interstate operations of such carrier or carriers or upon interstate commerce. When any petition shall be filed with the Commission under the provisions of this paragraph the Commission shall notify the Governor of the State in which such train or ferry is operated at least thirty days in advance of the hearing provided for in this paragraph, and such hearing shall be held by the Commission in the State in which such train or ferry is operated; and the Commission is authorized to avail itself of the cooperation, services, records and facilities of the authorities in such State in the performance of its functions under this paragraph.

(Feb. 4, 1887, ch. 104, pt. I, § 13a, as added Aug. 12, 1958, Pub. L. 85-625, § 5, 72 Stat. 571.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 45 sections 521, 561, 564.

§ 14. Reports and decisions of Commission

(1) Reports of investigations by Commission

Whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded, such report shall include the findings of fact on which the award is made.

(2) Record of reports; copies

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

(3) Publication of reports and decisions; printing and distribution of annual reports

The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained in all courts of the United States and of the several States without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports.

(Feb. 4, 1887, ch. 104, pt. I, § 14, 24 Stat. 384; Mar. 2, 1889, ch. 382, § 4, 25 Stat. 859; June 29, 1906, ch. 3591, § 3, 34 Stat. 589; Feb. 28, 1920, ch. 91, § 417, 41 Stat. 484; Aug. 9, 1935, ch. 408, § 1, 49 Stat. 543.)

AMENDMENTS

1935—Act Aug. 9, 1935, substituted "this part", which has been translated as "this chapter", for "this Act", meaning act Feb. 4, 1887, known as the Interstate Commerce Act.

FEDERAL RULES OF CIVIL PROCEDURE

Effect of rule 44 on this section, see note by Advisory Committee under rule 44, title 28, Appendix, Judiciary and Judicial Procedure.

Proof of official records, see rule 44.

CROSS REFERENCES

Motor Carrier Act, application of this section to, see section 304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 304, 1655 of this title.

§ 15. Determination of rates, routes, etc.; routing of traffic; disclosures, etc.

(1) Commission empowered to determine and prescribe rates, classifications, etc.

Whenever, after full hearing, upon a complaint made as provided in section 13 of this title, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this chapter for the transportation of persons or property, as defined in section 1 of this title, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this chapter, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this chapter, the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

(2) Orders of Commission

Except as otherwise provided in this chapter, all orders of the Commission, other than orders for the payment of money, shall take effect within such reasonable time as the Commission may prescribe. Such orders shall continue in force until its further order, or for a specified period of time, according as shall be prescribed in the order, unless the same shall be suspend-

ed or modified or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction.

(3) Establishment of through routes, joint classifications, joint rates, fares, etc.

The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by carriers subject to this chapter, or by carriers by railroad subject to this chapter and common carriers by water subject to chapter 12 of this title, or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character. If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancelation to show that it is consistent with the public interest, without regard to the provisions of paragraph (4) of this section. With respect to carriers by railroad, in determining whether any such cancellation or proposed cancellation involving any common carrier by railroad is consistent with the public interest, the Commission shall, to the extent applicable, (a) compare the distance traversed and the average transportation time and expense required using the through route, and the distance traversed and the average transportation time and expense required using alternative routes, between the points served by such through route, (b) consider any reduction in energy consumption which may result from such cancellation, and (c) take into account the overall impact of such cancellation on the shippers and carriers who are affected thereby.

(4) Through routes to embrace entire length of railroad; temporary through routes

In establishing any such through route the Commission shall not (except as provided in section 3 of this title, and except where one of the carriers is a water line) require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (b) unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation: *Provided, however,* That in prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b) of this paragraph, give reasonable preference to the carrier by railroad which originates the traffic. No through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs. In time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission, it may (either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleadings by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest.

(5) Transportation of livestock in carload lots; services included

Transportation wholly by railroad of ordinary livestock in carload lots destined to or received at public stockyards shall include all necessary service of unloading and reloading en route, delivery at public stockyards of inbound shipments into suitable pens, and receipt and loading at such yards of outbound shipments, without extra charge therefor to the shipper, consignee, or owner, except in cases where the unloading or reloading en route is at the request of the shipper, consignee, or owner, or to try an intermediate market, or to comply with quarantine regulations. The Commission may prescribe or approve just and reasonable rules governing each of such excepted services. Nothing in this paragraph shall be construed to affect the duties and liabilities of the carriers existing on February 28, 1920, by virtue of law respecting the transportation of other than ordinary livestock, or the duty of performing service as to shipments other than those to or from public stockyards.

(6) Commission to establishment just divisions of joint rates, fares, or charges; adjustments; procedures applicable

(a) Whenever, after full hearing upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation)

would have been the just, reasonable and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. In so prescribing and determining the divisions of joint rates, fares, and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers; and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare, or charge.

(b) Notwithstanding any other provision of law, the Commission shall, within 180 days after February 5, 1976, establish, by rule, standards and procedures for the conduct of proceedings for the adjustment of divisions of joint rates or fares (whether prescribed by the Commission or otherwise) in accordance with the provisions of this paragraph. The Commission shall issue a final order in all such proceedings within 270 days after the submission to the Commission of a case. If the Commission is unable to issue such a final order within such time, it shall issue a report to the Congress setting forth the reasons for such inability.

(c) All evidentiary proceedings conducted pursuant to this paragraph shall be completed, in a case brought upon a complaint, within 1 year following the filing of the complaint, or, in a case brought upon the Commission's initiative, within 2 years following the commencement of such proceeding, unless the Commission finds that such a proceeding must be extended to permit a fair and expeditious completion of the proceeding. If the Commission is unable to meet any such time requirement, it shall issue a report to the Congress setting forth the reasons for such inability.

(d) Whenever a proceeding for the adjustment of divisions of joint rates or fares (whether prescribed by the Commission or otherwise established) is commenced by the filing of a complaint with the Commission, the complaining carrier or carriers shall (i) attach thereto all of the evidence in support of their position, and (ii) during the course of such proceeding, file only rebuttal or reply evidence unless otherwise directed by order of the Commission. Upon receipt of a notice of intent to file a complaint pursuant to this paragraph, the Commission shall accord, to the party filing such notice, the same right to discovery that would be accorded to a party filing a complaint pursuant to this paragraph.

(7) Commission to determine lawfulness of new rates; suspension; refunds; nonapplicability to common carriers by railroad subject to chapter

Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the Commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, after September 18, 1940, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible. This paragraph shall not apply to common carriers by railroad subject to this chapter.

(8) Commission to determine lawfulness of new rates; applicability to common carrier by railroad; suspensions; accounts; hearing and basis of decision

(a) Whenever a schedule is filed with the Commission by a common carrier by railroad stating a new individual or joint rate, fare, or charge, or a new individual or joint classification, regulation, or practice affecting a rate, fare, or charge, the Commission may, upon the complaint of an interested party or upon its own initiative, order a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice. The hearing may be conducted without answer or other formal pleading, but reasonable notice shall be provided to interested parties. Such hearing shall be completed and a final decision rendered by

the Commission not later than 7 months after such rate, fare, charge, classification, regulation, or practice was scheduled to become effective, unless, prior to the expiration of such 7-month period, the Commission reports in writing to the Congress that it is unable to render a decision within such period, together with a full explanation of the reason for the delay. If such a report is made to the Congress, the final decision shall be made not later than 10 months after the date of the filing of such schedule. If the final decision of the Commission is not made within the applicable time period, the rate, fare, charge, classification, regulation, or practice shall go into effect immediately at the expiration of such time period, or shall remain in effect if it has already become effective. Such rate, fare, charge, classification, regulation, or practice may be set aside thereafter by the Commission if, upon complaint of an interested party, the Commission finds it to be unlawful.

(b) Pending a hearing pursuant to subdivision (a), the schedule may be suspended, pursuant to subdivision (d), for 7 months beyond the time when it would otherwise go into effect, or for 10 months if the Commission makes a report to the Congress pursuant to subdivision (a), except under the following conditions:

(i) in the case of a rate increase, a rate may not be suspended on the ground that it exceeds a just and reasonable level if the rate is within a limit specified in subdivision (c), except that such a rate change may be suspended under any provision of section 2, 3, or 4 of this title or, following promulgation of standards and procedures under section 1(5)(d) of this title, if the carrier is found to have market dominance, within the meaning of section 1(5)(c)(i) of this title, over the service to which such rate increase applies; or

(ii) in the case of a rate decrease, a rate may not be suspended on the ground that it is below a just and reasonable level if the rate is within a limit specified in subdivision (c), except that such a rate change may be suspended under any provision of section 2, 3, or 4 of this title, or for the purposes of investigating such rate change upon a complaint that such rate change constitutes a competitive practice which is unfair, destructive, predatory or otherwise undermines competition which is necessary in the public interest.

(c) The limitations upon the Commission's power to suspend rate changes set forth in subdivisions (b)(i) and (ii) apply only to rate changes which are not of general applicability to all or substantially all classes of traffic and only if—

(i) the rate increase or decrease is filed within 2 years after February 5, 1976;

(ii) the common carrier by railroad notifies the Commission that it wishes to have the rate considered pursuant to this subdivision;

(iii) the aggregate of increases or decreases in any rate filed pursuant to clauses (i) and (ii) of this subdivision within the first 365 days following February 5, 1976, is not more than 7 per centum of the rate in effect on January 1, 1976; and

(iv) the aggregate of the increases or decreases for any rate filed pursuant to clauses (i) and (ii) of this subdivision within the second 365 day-period following February 5, 1976, is not more than 7 per centum of the rate in effect on January 1, 1977.

(d) The Commission may not suspend a rate under this paragraph unless it appears from specific facts shown by the verified complaint of any person that—

(i) without suspension the proposed rate change will cause substantial injury to the complainant or the party represented by such complainant; and

(ii) it is likely that such complainant will prevail on the merits.

The burden of proof shall be upon the complainant to establish the matters set forth in clauses (i) and (ii) of this subdivision. Nothing in this paragraph shall be construed as establishing a presumption that any rate increase or decrease in excess of the limits set forth in clauses (iii) or (iv) of subdivision (c) is unlawful or should be suspended.

(e) If a hearing is initiated under this paragraph with respect to a proposed increased rate, fare, or charge, and if the schedule is not suspended pending such hearing and the decision thereon, the Commission shall require the railroads involved to keep an account of all amounts received because of such increase from the date such rate, fare, or charge became effective until the Commission issues an order or until 7 months after such date, whichever first occurs, or, if the hearings are extended pursuant to subdivision (a), until an order issues or until 10 months elapse, whichever first occurs. The account shall specify by whom and on whose behalf the amounts are paid. In its final order, the Commission shall require the common carrier by railroad to refund to the person on whose behalf the amounts were paid that portion of such increased rate, fare, or charge found to be not justified, plus interest at a rate which is equal to the average yield (on the date such schedule is filed) of marketable securities of the United States which have a duration of 90 days. With respect to any proposed decreased rate, fare, or charge which is suspended, if the decrease or any part thereof is ultimately found to be lawful, the common carrier by railroad may refund any part of the portion of such decreased rate, fare, or charge found justified if such carrier makes such a refund available on an equal basis to all shippers who participated in such rate, fare, or charge according to the relative amounts of traffic shipped at such rate, fare, or charge.

(f) In any hearing under this section, the burden of proof is on the common carrier by railroad to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable. The Commission shall specifically consider, in any such hearing, proof that such proposed changed rate, fare, charge, classification, rule, regulation, or practice will have a significantly adverse effect (in violation of section 2 or 3 of this title) on the competitive posture of shippers or consignees affected thereby. The Commission shall give such hearing and decision preference over all other matters relating to railroads pending before the Commission and

shall make its decision at the earliest practicable time.

(9) Commission to investigate lawfulness of rates with respect to market dominance of common carrier by railroad; conclusiveness of findings; suspensions

Following promulgation of standards under section 1(5)(d) of this title, whenever a rate of a common carrier by railroad subject to this chapter is challenged as being unreasonably high, the Commission shall, upon complaint or upon its own initiative and within 90 days after the commencement of a proceeding to investigate the lawfulness of such rate, determine whether the carrier proposing such rate has market dominance, within the meaning of section 1(5)(c)(i) of this title, over the service to which such rate applies. If the Commission finds that such a carrier does not have such market dominance, such finding shall be determinative in all additional or other proceedings under this Act concerning such rate or service, unless (a) such finding is modified or set aside by the Commission, or (b) such finding is set aside by a court of competent jurisdiction. Nothing in this paragraph shall limit the Commission's power to suspend a rate pursuant to this section, except that if the Commission has found that a carrier does not have such market dominance over the service to which a rate applies, the Commission may not suspend any increase in such rate on the ground that such rate as increased exceeds a just or reasonable maximum for such service, unless the Commission specifically modifies or sets aside its prior determination concerning market dominance over the service to which such rate applies.

(10) Shipper's choice of route to be observed

In all cases where at the time of delivery of property to any railroad corporation being a common carrier for transportation subject to the provisions of this chapter to any point of destination, between which and the point of such delivery for shipment two or more through routes and through rates shall have been established as in this chapter provided to which through routes and through rates such carrier is a party, the person, firm, or corporation making such shipment, subject to such reasonable exceptions and regulations as the Interstate Commerce Commission shall from time to time prescribe, shall have the right to designate in writing by which of such through routes such property shall be transported to destination, and it shall thereupon be the duty of the initial carrier to route said property and issue a through bill of lading therefor as so directed, and to transport said property over its own line or lines and deliver the same to a connecting line or lines according to such through route, and it shall be the duty of each of said connecting carriers to receive said property and transport it over the said line or lines and deliver the same to the next succeeding carrier or consignee according to the routing instructions in said bill of lading: *Provided, however,* That the shipper shall in all instances have the right to determine, where competing lines of railroad constitute portions of a through line or route, over which of said competing lines so constituting a portion of said through line or route his freight shall be transported.

(11) Liability of carriers where property is delivered contrary to routing instructions

Whenever property is diverted or delivered by one carrier to another carrier contrary to routing instructions in the bill of lading, unless such diversion or delivery is in compliance with a lawful order, rule, or regulation of the Commission, such carriers shall, in a suit or action in any court of competent jurisdiction, be jointly and severally liable to the carrier thus deprived of its right to participate in the haul of the property, for the total amount of the rate or charge it would have received had it participated in the haul of the property. The carrier to which the property is thus diverted shall not be liable in such suit or action if it can show, the burden of proof being upon it, that before carrying the property it had no notice, by bill of lading, waybill or otherwise, of the routing instructions. In any judgment which may be rendered the plaintiff shall be allowed to recover against the defendant a reasonable attorney's fee to be taxed in the case.

(12) Direction of unrouted traffic by Commission

With respect to traffic not routed by the shipper, the Commission may, whenever the public interest and a fair distribution of the traffic require, direct the route which such traffic shall take after it arrives at the terminus of one carrier or at a junction point with another carrier, and is to be there delivered to another carrier.

(13) Disclosure or solicitation of information concerning shipments unlawful; exceptions

It shall be unlawful for any common carrier subject to the provisions of this chapter, or any officer, agent, or employee of such common carrier, or for any other person or corporation lawfully authorized by such common carrier to receive information therefrom, knowingly to disclose to or permit to be acquired by any person or corporation other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person or corporation to solicit or knowingly receive any such information which may be so used: *Provided,* That nothing in this chapter shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any State or Federal court, or to any officer or agent of the Government of the United States, or of any State or Territory, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime; or information given by a common carrier to another carrier or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers.

(14) Penalty for violation of preceding provisions

Any person, corporation, or association violating any of the provisions of paragraph 13 of this section shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not more than $1,000.

(15) Allowance for service or facilities furnished by shipper

If the owner of property transported under this chapter directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be published in tariffs or schedules filed in the manner provided in this chapter and shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section.

(16) Other powers of Commission not excluded

The foregoing enumeration of powers shall not exclude any power which the Commission would otherwise have in the making of an order under the provisions of this chapter.

(17) Standards and expeditious procedures for establishment of rates based on seasonal, regional, or peak-period demand for rail services; annual report

Within 1 year after February 5, 1976, the Commission shall establish, by rule, standards and expeditious procedures for the establishment of railroad rates based on seasonal, regional, or peak-period demand for rail services. Such standards and procedures shall be designed to (a) provide sufficient incentive to shippers to reduce peak-period shipments, through rescheduling and advance planning; (b) generate additional revenues for the railroads; and (c) improve (i) the utilization of the national supply of freight cars, (ii) the movement of goods by rail, (iii) levels of employment by railroads, and (iv) the financial stability of markets served by railroads. Following the establishment of such standards and procedures, the Commission shall prepare and submit to the Congress annual reports on the implementation of such rates, including recommendations with respect to the need, if any, for additional legislation to facilitate the establishment of such demand-sensitive rates.

(18) Expeditious procedures for separate rates for distinct rail services

In order to encourage competition, to promote increased reinvestment by railroads, and to encourage and facilitate increased nonrailroad investment in the production of rail services, a carrier by railroad subject to this chapter may, upon its own initiative or upon the request of any shipper or receiver of freight, file separate rates for distinct rail services. Within 1 year after February 5, 1976, the Commission shall establish, by rule, expeditious procedures for permitting publication of separate rates for distinct rail services in order to (a) encourage the pricing of such services in accordance with the carrier's cash-outlays for such services and the demand therefor, and (b) enable shippers and receivers to evaluate all transportation and related charges and alternatives.

(19) Establishment of rate incentives for capital investment

Notwithstanding any other provision of law, a common carrier by railroad subject to this chapter may file with the Commission a notice of intention to file a schedule stating a new rate, fare, charge, classification, regulation, or practice whenever the implementation of the proposed schedule would require a total capital investment of $1,000,000 or more, individually or collectively, by such carrier, or by a shipper, receiver, or agent thereof, or an interested third party. The filing shall be accompanied by a sworn affidavit setting forth in detail the anticipated capital investment upon which such filing is based. Any interested person may request the Commission to investigate the schedule proposed to be filed, and upon such request the Commission shall hold a hearing with respect to such schedule. Such hearing may be conducted without answer or other formal pleading, but reasonable notice shall be provided to interested parties. Unless, prior to the 180-day period following the filing of such notice of intention, the Commission determines, after a hearing, that the proposed schedule, or any part thereof, would be unlawful, such carrier may file the schedule at any time within 180 days thereafter to become effective after 30 days' notice. Such a schedule may not, for a period of 5 years after its effective date, be suspended or set aside as unlawful under section 1, 2, 3, or 4 of this title, except that the Commission may at any time order such schedule to be revised to a level equaling the variable costs of providing the service, if the rate stated therein is found to reduce the going concern value of the carrier.

(Feb. 4, 1887, ch. 104, pt. I, § 15, 24 Stat. 384; June 29, 1906, ch. 3591, § 4, 34 Stat. 589; June 18, 1910, ch. 309, § 12, 36 Stat. 551; Feb. 28, 1920, ch. 91, §§ 418–421, 41 Stat. 484–488; Mar. 4, 1927, ch. 510, § 2, 44 Stat. 1447; June 19, 1934, ch. 652, § 602(b), 48 Stat. 1102; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Sept. 18, 1940, ch. 722, title I, § 10(a)–(d), 54 Stat. 911, 912; Feb. 5, 1976, Pub. L. 94–210, title II, §§ 201, 202(c)–(e), 203(a), 206, title III, § 302, 90 Stat. 34–37, 39, 41, 48; Oct. 19, 1976, Pub. L. 94–555, title II, § 220(m), 90 Stat. 2630.)

REFERENCES IN TEXT

This Act, referred to in par. (9), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 1 et seq.) and chapters 8, 12, 13, and 19 (§§ 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

CODIFICATION

Reference in par. (14) to paragraph 11 of this section was changed to paragraph 13 of this section to reflect

the probable intent of Congress in view of the redesignation of par. (11) as (13) by Pub. L. 94-210, § 202(c).

AMENDMENTS

1976—Par. (2). Pub. L. 94-210, § 302, substituted "as the Commission may prescribe. Such orders shall" for ", not less than thirty days, and shall".

Par. (3). Pub. L. 94-210, § 203(a), added provisions relating to criteria for consideration by Commission in determining whether any cancellation or proposed cancellation involving common carrier by railroad is consistent with public interest.

Par. (6). Pub. L. 94-210, § 201, designated existing provision as subd. (a) and added subds. (b) to (d).

Par. (7). Pub. L. 94-210, § 202(e)(1), added provision exempting from applicability of this par. common carriers by railroad subject to this chapter.

Par. (8). Pub. L. 94-210, § 202(c), (e)(2), added par. (8). Prior par. (8) was redesignated as (10).

Par. (9). Pub. L. 94-210, § 202(c), added par. (9). Prior par. (9) was redesignated as (11).

Par. (10). Pub. L. 94-210, § 202(c), redesignated par. (8) as (10). Former par. (10) was redesignated as (12).

Par. (11). Pub. L. 94-210, § 202(c), redesignated par. (9) as (11). Former par. (11) was redesignated as (13).

Par. (12). Pub. L. 94-210, § 202(c), redesignated par. (10) as (12). Former par. (12) was redesignated as (14).

Par. (13). Pub. L. 94-210, § 202(c), redesignated par. (11) as (13). Former par. (13) was redesignated as (15).

Par. (14). Pub. L. 94-210, § 202(c), redesignated par. (12) as (14). Former par. (14) was redesignated as (16).

Par. (15). Pub. L. 94-210, § 202(c), redesignated par. (13) as (15).

Par. (16). Pub. L. 94-210, § 202(c), redesignated par. (14) as (16).

Par. (17). Pub. L. 94-210, § 202(d), added par. (17).

Par. (18). Pub. L. 94-210, § 202(d), added par. (18).

Par. (19). Pub. L. 94-555 substituted "section 1, 2" for "section 2" following "as unlawful under".

Pub. L. 94-210, § 206, added par. (19).

1940—Par. (1). Act Sept. 18, 1940, § 10(a), amended par. (1).

Pars. (3) and (4). Act Sept. 18, 1940, § 10(b), amended pars. (3) and (4).

Par. (7). Act Sept. 18, 1940, § 10(c), amended par. (7).

Par. (13). Act Sept. 22, 1940, § 10(d), inserted after "the charge and allowance therefor shall be", the words "published in tariffs or schedules filed in the manner provided in this chapter and shall be".

1935—Act Aug. 9, 1935, substituted "this part", which has been translated as "this chapter", for "this Act", meaning act Feb. 4, 1887, known as the Interstate Commerce Act.

1934—Act June 19, 1934, struck out provisions relating to communication by wire, wireless, or to telegraph, telephone, or cable companies operating by wire or wireless. See now section 151 et seq. of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

1927—Par. (7). Act. Mar. 4, 1927, amended par. (7).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-555 effective on October 1, 1976, see section 303 of Pub. L. 94-555, set out as an Effective Date of 1976 Amendment note under section 543 of Title 45, Railroads.

APPLICATION OF RATEMAKING AMENDMENTS OF PUB. L. 94-210 TO EXISTING PROVISIONS

Amendment by section 202 of Pub. L. 94-210 to this section not to modify application of sections 2, 3, and 4 of this title in determining lawfulness of any rate or practice, make lawful any competitive practice which is unfair, etc., see section 202(f) of Pub. L. 94-210, set out as a note under section 1 of this title.

STUDIES OF EFFECT OF RATEMAKING AMENDMENTS OF PUB. L. 94-210 ON DEVELOPMENT OF STABLE RAILWAY SYSTEM OF UNITED STATES

Study, data, and transmittal to Congress of effect of amendments by section 202 of Pub. L. 94-210 on this section, see section 202(g) of Pub. L. 94-210, set out as a note under section 1 of this title.

CROSS REFERENCES

Failure of carrier or officer to obey orders, penalty, see section 16 of this title.

Readjustment in rates, fares, and charges to shippers, see section 65a of this title.

Stockyard as defined in Packers and Stockyards Act not deemed definition of public stockyards, see section 202 and section 202 note of Title 7, Agriculture.

Switch connection and tracks, orders of Commission directing compliance, see section 1, of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 5c, 16, 51, 907, 1654 of this title; title 11 section 205.

§ 15a. Fair return for carriers

(1) Definition of "rates"

When used in this section, the term "rates" means rates, fares, and charges, and all classifications, regulations, and practices relating thereto.

(2) Ratemaking criteria; nonapplicability to common carriers by railroad subject to chapter

In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service. This paragraph shall not apply to common carriers by railroad subject to this chapter.

(3) Competition between carriers of different modes of transportation; nonapplicability to common carriers by railroad subject to chapter

In a proceeding involving competition between carriers of different modes of transportation subject to this Act, the Commission, in determining whether a rate is lower than a reasonable minimum rate, shall consider the facts and circumstances attending the movement of the traffic by the carrier or carriers to which the rate is applicable. Rates of a carrier shall not be held up to a particular level to protect the traffic of any other mode of transportation, giving due consideration to the objectives of the national transportation policy declared in this Act. This paragraph shall not apply to common carriers by railroad subject to this chapter.

(4) Revenue levels of common carriers by railroad; standards and procedures for establishment

With respect to common carriers by railroad, the Commission shall, within 24 months after February 5, 1976, after notice and an opportunity for a hearing, develop and promulgate (and thereafter revise and maintain) reasonable standards and procedures for the establishment of revenue levels adequate under honest, economical, and efficient management to cover total operating expenses, including depreciation and obsolescence, plus a fair, reasonable, and economic profit or return (or both) on capital employed in the business. Such revenue levels

should (a) provide a flow of net income plus depreciation adequate to support prudent capital outlays, assure the repayment of a reasonable level of debt, permit the raising of needed equity capital, and cover the effects of inflation and (b) insure retention and attraction of capital in amounts adequate to provide a sound transportation system in the United States. The Commission shall make an adequate and continuing effort to assist such carriers in attaining such revenue levels. No rate of a common carrier by railroad shall be held up to a particular level to protect the traffic of any other carrier or mode of transportation, unless the Commission finds that such rate reduces or would reduce the going concern value of the carrier charging the rate.

(5) Consideration of allegations of change in rate relationships between commodities, ports, etc., and effect on competitive position of shippers or consignees by proposed rate increase or decrease

The Commission shall, in any proceeding which involves a proposed increase or decrease in railroad rates, specifically consider allegations that such increase or decrease would change the rate relationships between commodities, ports, points, regions, territories, or other particular descriptions of traffic (whether or not such relationships were previously considered or approved by the Commission) and allegations that such increase or decrease would have a significantly adverse effect on the competitive position of shippers or consignees served by the railroad proposing such increase or decrease. If the Commission finds that such allegations as to change or effect are substantially supported on the record, it shall take such steps as are necessary, either before or after such proposed increase or decrease becomes effective and either within or outside such proceeding, to investigate the lawfulness of such change or effect.

(6) Adjustment of interstate rates

(a) Duty of Commission; petitions; requirements and considerations

The Commission shall by rule, on or before August 1, 1973, establish requirements for petitions for adjustment of interstate rates of common carriers subject to this chapter based upon increases in expenses of such carriers resulting from any increases in taxes under the Railroad Retirement Tax Act, as amended [26 U.S.C. 3201 et seq.], occurring on or before January 1, 1975, or as a result of the enactment of the Railroad Retirement Amendments of 1973. Such requirements, established pursuant to section 553 of title 5 (with time for comment limited so as to meet the required date for establishment and subject to future amendment or revocation), shall be designed to facilitate fair and expeditious action on any such petition as required in subparagraph (b) of this paragraph by disclosing such information as the amount needed in rate increases to offset such increases in expenses and the availability of means other than a rate increase by which the carrier might absorb or offset such increases in expenses.

(b) Interim rates; public notice requirement

Notwithstanding any other provision of law, the Commission shall, within thirty days of the filing of a verified petition in accordance with rules promulgated under subparagraph (a) of this paragraph, by any carrier or group of carriers subject to this chapter, permit the establishment of increases in the general level of the interstate rates of said carrier or carriers in an amount approximating that needed to offset increases in expenses theretofore experienced or demonstrably certain to occur commencing on or before the effective date of the increased rates, as a result of any increases in taxes under the Railroad Retirement Tax Act, as amended [26 U.S.C. 3201 et seq.], occurring on or before January 1, 1975, or as a result of the enactment of the Railroad Retirement Amendments of 1973. Such increases in rates may be made effective on not more than thirty nor less than ten days' notice to the public, notwithstanding any outstanding orders of the Commission. To the extent necessary to effectuate their establishment, rates so increased shall be relieved from the provisions of section 4 of this title and may be published in tariff supplements of the kind ordinarily authorized in general increase proceedings.

(c) Final rate determination; hearings, burden of proof; general ratemaking criteria; refunds, interest rate

The Commission shall within sixty days from the date of establishment of interim rates under subparagraph (b) of this paragraph commence hearings for the purpose of making the final rate determination. The Commission shall then proceed to make such final rate determination with the carrier having the burden of proof. In making such determination, the Commission may take into account all factors appropriate to ratemaking generally under this chapter and shall determine such final rates under the standards and limitations applicable to ratemaking generally under this chapter. If the increases in rates finally authorized by the Commission are less than the increases in rates initially made effective, the carrier or carriers shall, subject to such tariff provisions as the Commission shall deem sufficient, make such refunds (in the amount by which the initially increased rate collected exceeds the finally authorized increased rate) as may be ordered by the Commission, plus a reasonable rate of interest as determined by the Commission. Nothing contained in this paragraph shall limit or otherwise affect the authority of the Commission to authorize or permit to become effective any increase in rates other than the increases herein specified.

(d) Adjustment of intrastate rates

(A) Duty of State authority; petitions; interim rates; refunds, interest

The State authority having jurisdiction over petitions for intrastate rate increases by any carrier or group of carriers subject to this chapter shall, within 60 days of the filing of a verified petition for such increases based upon increases in expenses of such carriers as a result of any increases in taxes under the Railroad Retirement Tax Act, as amended [26 U.S.C. 3201 et seq.], occurring on or before January 1, 1975, or as a result of the enactment of the Railroad Retirement Amendments of 1973, act upon said petition. Such State authority may

grant an interim rate increase or a final rate increase. If such State authority grants any interim rate increases, it shall thereafter investigate and determine the reasonableness of such increases and modify them to the extent required by applicable law. To the extent that any such interim increases are reduced as a result of the action of a State authority, the carrier or carriers shall make such refunds (in the amount by which the initially increased rate collected exceeds the finally authorized increased rate) as may be ordered by such State authority, plus a reasonable rate of interest as determined by the State authority.

(B) Action by Commission where complete denial or absence of timely action by State authority; grant of interim rates by Commission; final rate determination by State authority, refunds

If a State authority denies in toto such a petition filed with it by such carrier or group of carriers seeking relief regarding such intrastate rate increases or does not act finally on such petition within 60 days from the presentation thereof, the Commission shall, within 30 days of the filing of a verified petition by such carrier or group of carriers relating to such intrastate rates, act upon such petition by applying the ratemaking criteria of subparagraph (c) of this paragraph. If the Commission grants, in whole or in part, such petition by any carrier or group of carriers, the increase authorized shall be considered as an interim rate increase as provided in subparagraph (A) above and shall be subject to final determination by the State authority in accordance with the procedures prescribed for interim intrastate rate increases as provided above, including the ordering of refunds by such State authority.

(C) Action by Commission where partial denial by State authority results in discrimination

If a State authority denies in part such a petition filed with it by such carrier or group of carriers, within 60 days from the presentation thereof, the Commission shall, within 30 days of the filing of a verified petition by such carrier or group of carriers relating to the intrastate rates involved, act upon such petition by applying the criteria of section 13(4) of this title.

(D) Stay of refund pending final order under section 13(4)

Nothing in subparagraph (A) or (B) shall be construed to abrogate the authority of the Commission under section 13(4) of this title and in the event a carrier or group of carriers subject to a refund requirement under subparagraph (A) or (B) files a petition under section 13(3) of this title, the refund requirement shall be stayed pending final order of the Commission under section 13(4) of this title.

(E) Reasonable level for increased freight rates; preservation of market patterns and relationships and port relationships

Any increased freight rates authorized shall not exceed a reasonable level by types of traffic, commodities, or commodity groups and shall preserve existing market patterns and relationships and present port relationships by increase[1] limitations within and between the major districts to the extent possible without authorizing unreasonable increases in any district.

(Feb. 4, 1887, ch. 104, pt. I, § 15a, as added Feb. 28, 1920, ch. 91, § 422, 41 Stat. 488, and amended June 16, 1933, ch. 91, title II, § 205, 48 Stat. 220; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Sept. 18, 1940, ch. 722, title I, § 10(e), 54 Stat. 912; Aug. 12, 1958, Pub. L. 85-625, § 6, 72 Stat. 572; July 10, 1973, Pub. L. 93-69, title II, § 201, 87 Stat. 166; Feb. 5, 1976, Pub. L. 94-210, title II, §§ 203(b), 205, 90 Stat. 39, 41.)

REFERENCES IN TEXT

This Act, referred to in par. (3), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 1 et seq.) and chapters 8, 12, 13, and 19 (§§ 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

The Railroad Retirement Tax Act, referred to in pars. (6)(a), (b), (d)(A), is act Aug. 16, 1954, ch. 736, §§ 3201, 3202, 3211, 3212, 3221, and 3231 to 3233, 68A Stat. 431, which is classified generally to chapter 22 (§ 3201 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3233 of Title 26 and Tables volume.

The Railroad Retirement Amendments of 1973, referred to in pars. (6)(a), (b), and (d)(A), mean Pub. L. 93-69, title I, July 10, 1973, 87 Stat. 162, which amended sections 3201, 3202, 3211, and 3221 of Title 26, Internal Revenue Code, and sections 228b, 228c, and 228e of Title 45, Railroads, enacted provisions set out as notes under section 3201 of Title 26 and sections 228b, 228c, 228f, and 228o of Title 45, and amended provisions set out as notes under section 228c of Title 45. For complete classification of this Act to the Code, see Short Title of 1973 Amendment note set out under section 1 of Title 26 and Tables volume.

AMENDMENTS

1976—Par. (2). Pub. L. 94-210, § 205(1), added provision relating to nonapplicability to common carriers by railroad subject to chapter.

Par. (3). Pub. L. 94-210, § 205(1), added provision relating to nonapplicability to common carriers by railroad subject to chapter.

Par. (4). Pub. L. 94-210, § 205(2), added par. (4). Former par. (4) was redesignated as (6).

Par. (5). Pub. L. 94-210, § 203(b), added par. (5).

Par. (6). Pub. L. 94-210, § 205(2), redesignated par. (4) as (6).

1973—Par. (4). Pub. L. 93-69 added par. (4).

1958—Par. (3). Pub. L. 85-625 added par. (3).

1940—Par. (2). Act Sept. 18, 1940, amended par. (2).

1935—Act Aug. 9, 1935, substituted "this part", which has been translated as "this chapter", for "this Act", meaning act Feb. 4, 1887, known as the Interstate Commerce Act.

1933—Act June 16, 1933, amended section generally to eliminate definitions of terms "carrier" and "net railway operating income" and certain provisions relating to the reasonable adjustment of rates by the commission.

SEPARABILITY OF PROVISIONS

Section 301 of Pub. L. 93-69 provided that: "If any provision of this Act [amending this section, sections 3201, 3202, 3211, and 3221 of Title 26, Internal Revenue Code, and sections 228b, 228c, and 228e of Title 45, Railroads, and enacting provisions set out as notes under this section, section 3201 of Title 26, and sections 228b, 228c, 228f, and 228o of Title 45] or the application thereof to any person or circumstances should be held invalid, the remainder of such Act or

[1] So in original. Probably should read "increased".

the application of such provision to other persons or circumstances shall not be affected thereby."

NATIONAL TRANSPORTATION POLICY

For objectives of the national transportation policy, referred to in par. (3) of the text, see note set out preceding section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5a, 15b of this title.

§ 15b. Collection of excess income discontinued; general railroad contingent fund liquidated; distribution of moneys; computation of tax liabilities

(a) All moneys which were recoverable by and payable to the Interstate Commerce Commission, under paragraph (6) of section 15a of this title, as in force prior to June 16, 1933, shall cease to be so recoverable and payable; and all proceedings pending for the recovery of any such moneys shall be terminated. The general railroad contingent fund established under section 15a of this title shall be liquidated and the Secretary of the Treasury shall distribute the moneys in such fund among the carriers which have made payments under said section, so that each such carrier shall receive an amount bearing the same ratio to the total amount in such fund that the total of amounts paid under such section by such carrier bears to the total of amounts paid under said section by all carriers; except that if the total amount in such fund exceeds the total of amounts paid under said section by all carriers such excess shall be distributed among such carriers upon the basis of the average rate of earnings (as determined by the Secretary of the Treasury) on the investment of the moneys in such fund and differences in dates of payments by such carriers.

(b) The income, war-profits, and excess-profits tax liabilities for any taxable period ending after February 28, 1920, of the carriers and corporations whose income, war-profits, or excess-profits tax liabilities were affected by section 15a of this title, as in force prior to June 16, 1933, shall be computed as if said section had never been enacted, except that, in the case of carriers or corporations which have made payments under paragraph (6) of section 15a of this title, an amount equal to such payments shall be excluded from gross income for the taxable periods with respect to which they were made. All distributions made to carriers in accordance with subdivision (a) of this section shall be included in the gross income of the carriers for the taxable period in which this section is enacted. The provisions of this subdivision shall not be held to affect (1) the statutes of limitations with respect to the assessment, collection, refund, or credit of income, war-profits or excess-profits taxes or (2) the liabilities for such taxes of any carriers or corporations if such liabilities were determined prior to June 16, 1933, in accordance with section 1106(b) of the Revenue Act of 1926 or section 606 of the Revenue Act of 1928, or in accordance with a final judgment of a court, an order of the United States Tax Court which had become final, or an offer in compromise duly accepted in accordance with law.

(June 16, 1933, ch. 91, title II, § 206, 48 Stat. 220; Oct. 21, 1942, ch. 619, title V, § 504(c), 56 Stat. 957; Dec. 30, 1969, Pub. L. 91-172, title IX, § 951, Dec. 30, 1969, 83 Stat. 730.)

REFERENCES IN TEXT

Former paragraph (6) of section 15a of this title, referred to in subd. (a), provided as follows: "(6) Disposition of amounts received in excess of 6 per centum. If, under the provisions of this section, any carrier receives for any year a net railway operating income in excess of 6 per centum of the value of the railway property held for and used by it in the service of transportation, one-half of such excess shall be placed in a reserve fund established and maintained by such carrier, and the remaining one-half thereof shall, within the first four months following the close of the period for which such computation is made, be recoverable by and paid to the commission for the purpose of establishing and maintaining a general railroad contingent fund as hereinafter described. For the purposes of this paragraph the value of the railway property and the net railway operating income of a group of carriers, which the commission finds are under common control and management and are operated as a single system, shall be computed for the system as a whole irrespective of the separate ownership and accounting returns of the various parts of such system. The value of such railway property shall be determined by the commission in the manner provided in paragraph (4)."

Section 1106(b) of the Revenue Act of 1926, referred to in subsec. (b), means section 1106(b) of act Feb. 26, 1926, ch. 27, 44 Stat. 113, which was classified to section 1249(b) of former Title 26, Internal Revenue, and was repealed by act May 29, 1928, ch. 852, § 606(c), 45 Stat. 874. See now section 7121 of Title 26, Internal Revenue Code.

Section 606 of the Revenue Act of 1928, referred to in subsec. (b), means section 606 of act May 29, 1928, ch. 852, 45 Stat. 874, which was classified to section 2606 of former Title 26, Internal Revenue, and was repealed by act Feb. 10, 1939, ch. 2, § 4, 53 Stat. 1. See now section 7121 of Title 26, Internal Revenue Code.

CODIFICATION

Section was enacted as part of act June 16, 1933, popularly known as the Emergency Railroad Transportation Act, 1933, and not as a part of act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which comprises this chapter and chapters 8, 12, 13, and 19 of this title.

CHANGE OF NAME

"United States Tax Court", referred to in subsec. (b), was substituted for "Tax Court of the United States" pursuant to Pub. L. 91-172, title IX, § 951, Dec. 30, 1969, 83 Stat. 730, which amended section 7441 of Title 26, Internal Revenue Code, to substitute provisions establishing the United States Tax Court for provisions continuing the Board of Tax Appeals as an independent agency in the Executive Branch of Government to be known as the Tax Court of the United States.

"Tax Court of the United States" had been substituted for "Board of Tax Appeals" pursuant to act Oct. 21, 1942, ch. 619, title V, § 504(c), 56 Stat. 957.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5a of this title.

§ 16. Orders of Commission and enforcement thereof

(1) Award of damages

If, after hearing on a complaint made as provided in section 13 of this title, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this chapter for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the sum

to which he is entitled on or before a day named.

(2) Proceedings in courts to enforce orders; costs; attorney's fee

If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the district court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, or in any State court of general jurisdiction having jurisdiction of the parties, a complaint setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises. Such suit in the district court of the United States shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the Commission shall be prima facie evidence of the facts therein stated, and except that the plaintiff shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the plaintiff shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit.

(3) Limitation of actions

(a) All actions at law by carriers subject to this chapter for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.

(b) All complaints against carriers subject to this chapter for the recovery of damages not based on overcharges shall be filed with the Commission within two years from the time the cause of action accrues, and not after, subject to subdivision (d) of this paragraph.

(c) For recovery of overcharges action at law shall be begun or complaint filed with the Commission against carriers subject to this chapter within three years from the time the cause of action accrues, and not after, subject to subdivision (d) of this paragraph, except that if claim for the overcharge has been presented in writing to the carrier within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

(d) If on or before expiration of the two-year period of limitation in subdivision (b) of this paragraph or of the three-year period of limitation in subdivision (c) of this paragraph a carrier subject to this chapter begins action under subdivision (a) of this paragraph for recovery of charges in respect of the same transportation service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or such charges are collected by the carrier.

(e) The cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after.

(f) A complaint for the enforcement of an order of the Commission for the payment of money shall be filed in the district court or the State court within one year from the date of the order, and not after.

(g) The term "overcharges" as used in this section shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Commission.

(h) The provisions of this paragraph shall extend to and embrace cases in which the cause of action accrued prior to June 7, 1924, as well as cases in which the cause of action accrues thereafter, except that actions at law begun or complaints filed with the Commission against carriers subject to this chapter for the recovery of overcharges where the cause of action accrued on or after March 1, 1920, shall not be deemed to be barred under subdivision (c) of this paragraph if such actions shall have been begun or complaints filed prior to June 7, 1924, or within six months thereafter.

(i) The provisions of this paragraph (3) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this chapter: *Provided, however,* That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include three years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 66 of this title, whichever is later.

(4) Joinder of parties; process; judgment

In such suits all parties in whose favor the Commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.

(5) Service of order of Commission and notices of proceedings

Every order of the Commission shall be forthwith served upon the designated agent of the carrier in the city of Washington or in such other manner as may be provided by law. In proceedings before the Commission involving the lawfulness of rates, fares, charges, classifications, or practices, service of notice upon an attorney in fact of a carrier who has filed a tariff or schedule in behalf of such carrier shall

be deemed to be due and sufficient service upon the carrier, except where the carrier has designated an agent in the city of Washington, District of Columbia, upon whom service of notices and processes may be made, as provided in section 50 of this title: *Provided*, That in such proceedings service of notice of the suspension of a tariff or schedule upon an attorney in fact of a carrier who has filed said tariff or schedule in behalf of such carrier shall be deemed to be due and sufficient service upon the carrier, and service of notice of the suspension of a joint tariff or schedule upon a carrier which has filed said joint tariff or schedule to which another carrier is a party shall be deemed to be due and sufficient notice upon the several carriers parties thereto. Such service of notice may be made by mail to such attorney in fact or carrier at the address shown in the tariff or schedule.

(6) Suspension or modification of orders

The Commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper.

(7) Compliance with orders

It shall be the duty of every common carrier, its agents and employees, to observe and comply with such orders so long as the same shall remain in effect.

(8) Failure of carrier or officer to obey orders; penalty

Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of sections 3, 13, or 15 of this title shall forfeit to the United States the sum of $5,000 for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

(9) Suit for recovery of forfeiture

The forfeiture provided for in this chapter shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States, brought in the district where the carrier has its principal operating office, or in any district through which the road of the carrier runs.

(10) United States attorneys to prosecute for forfeitures; costs and expenses

It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

(11) Employment of attorneys by Commission

The Commission may employ such attorneys as it finds necessary for proper legal aid and service of the Commission or its members in the conduct of their work, or for proper representation of the public interests in investigations made by it or cases or proceedings pending before it, whether at the Commission's own instance or upon complaint, or to appear for or represent the Commission in any case in court; and the expenses of such employment shall be paid out of the appropriation for the Commission.

(12) Proceedings to enforce orders other than for payment of money

If any carrier fails or neglects to obey any order of the Commission other than for the payment of money, while the same is in effect, the Interstate Commerce Commission or any party injured thereby, or the United States, by its Attorney General, may apply to any district court of the United States of competent jurisdiction for the enforcement of such order. If, after hearing, such court determines that the order was regularly made and duly served, and that the carrier is in disobedience of the same, such court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it or them obedience to the same.

(13) Copies of schedules, tariffs, contracts, etc., kept as public records; evidence

The copies of schedules and classifications and tariffs of rates, fares, and charges, and of all contracts, agreements, and arrangements between common carriers filed with the Commission as herein provided, and the statistics, tables, and figures contained in the annual or other reports of carriers made to the Commission as required under the provisions of this chapter shall be preserved as public records in the custody of the secretary of the Commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of and extracts from any of said schedules, classifications, tariffs, contracts, agreements, arrangements, or reports, made public records as aforesaid, certified by the secretary, under the Commission's seal, shall be received in evidence with like effect as the originals.

(Feb. 4, 1887, ch. 104, pt. I, § 16, 24 Stat. 384; Mar. 2, 1889, ch. 382, § 5, 25 Stat. 859; June 29, 1906, ch. 3591, § 5, 34 Stat. 590; June 18, 1910, ch. 309, § 13, 36 Stat. 554; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Oct. 22, 1913, ch. 32, 38 Stat. 219; Feb. 28, 1920, ch. 91, §§ 423–429, 41 Stat. 491, 492; June 7, 1924, ch. 325, 43 Stat. 633; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Sept. 18, 1940, ch. 722, title I, § 11(a), (b), 54 Stat. 912, 913; June 25, 1948, ch. 646, § 1, 62 Stat. 909; Aug. 2, 1949, ch. 379, § 6, 63 Stat. 486; Aug. 26, 1958, Pub. L. 85–762, § 1(1), (2), 72 Stat. 859.)

AMENDMENTS

1958—Par. (3), subds. (a), (c) and (d). Pub. L. 85–762, § 1(1), substituted "three years" for "two years" in subds. (a) and (c), and the second time it appears in subd. (d).

Subd. (i) of par. (3). Pub. L. 85–762, § 1(2), added subd. (i).

1949—Par. (5). Act Aug. 2, 1949, added proviso.

1940—Par. (2). Act Sept. 18, 1940, § 11(a)(1), substituted "district" for "circuit" throughout, "complaint" for "petition" in first sentence and "plaintiff" for "petitioner" in the second and third sentences.

Par. (3), subds. (a), (c) and (d). Act Sept. 18, 1940, § 11(a)(2) to (4), substituted two-year limitations for the old three-year period.

Par. (3), subd. (f). Act Sept. 18, 1940, § 11(a)(5), substituted "complaint" for "petition".

Par. (5). Act Sept. 18, 1940, § 11(b), provided for service of notice upon attorney in fact who filed tariff or schedule in behalf of carrier except where carrier has designated agent in city of Washington, upon whom service of notices and processes may be made.

Par. (12). Act Sept. 18, 1940, § 11(a)(6) provided that application for enforcement of orders be made to any district court of competent jurisdiction instead of to the former Commerce Court.

1935—Act Aug. 9, 1935, substituted "this part", which has been translated as "this chapter" for "this Act", meaning act Feb. 4, 1887, known as Interstate Commerce Act.

1924—Par. (3). Act June 7, 1924, amended par. (3) generally and divided it into subdivisions.

1920—Par. (1). Act Feb. 28, 1920, § 423, numbered par. (1) as "(1)".

Par. (2). Act Feb. 28, 1920, numbered par. (2) as "(2)" and struck out provisions relating to time of filing complaints for reparation before commission and for institution of actions to enforce reparation orders, and added par. (3) covering provisions so stricken.

Par. (3). Act Feb. 28, 1920, § 424, added par. (3).

Pars. (4) to (7). Act Feb. 28, 1920, § 425, numbered pars. (4) to (7) as "(4)" to "(7)", respectively.

Par. (8). Act Feb. 28, 1920, § 426, numbered par. (8) as "(8)" and included orders made under sections 3 and 13 of this title.

Pars. (9) and (10). Act Feb. 28, 1920, § 427, numbered pars. (9) and (10) as "(9)" and "(10)", respectively.

Par. (11). Act Feb. 28, 1920, numbered par. (11) as "(11)" and omitted specific reference to the Commerce Court, which had been abolished.

Pars. (12) and (13). Act Feb. 28, 1920, § 429, numbered pars. (12) and (13) as "(12)" and "(13)", respectively.

1910—Par. (1). Act June 18, 1910, reenacted par. (1) without change.

Par. (2). Act June 18, 1910, extended jurisdiction to State courts of general jurisdiction.

Par. (4). Act June 18, 1910, reenacted par. (4) without change.

Par. (5). Act June 18, 1910, provided for service of Commission orders upon designated agent of carrier in City of Washington or in such other manner as provided by law.

Pars. (6) to (9). Act June 18, 1910, reenacted pars. (6) to (9) without change.

Par. (10). Act June 18, 1910, omitted provision relating to employment of special counsel and inserted a new paragraph with respect to the employment of attorneys which now constitutes par. (11) of this section.

Par. (11). Act June 18, 1910, added par. (11).

Par. (12). Act June 18, 1910, provided that application for enforcement of orders be made to the former Commerce Court instead of to the former circuit court and that such application could also be made by the United States, by its Attorney General.

Par. (13). Act June 18, 1910, included copies of classifications of rates, fares, and charges, included reports of carriers other than annual reports, and made minor changes in phraseology.

1906—Par. (1). Act June 29, 1906, added par. (1).

Par. (2). Act June 29, 1906, inserted provisions authorizing filing of petition in former circuit court for recovery from carrier of money which it has not paid although ordered to do so by Commission, that findings and order of Commission shall be prima facie evidence of facts, and for payment of costs and attorney's fee.

Pars. (4)-(10), (12) and (13). Act June 29, 1906, added pars. (4) to (10), (12) and (13).

1889—Act Mar. 2, 1889, amended section generally.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, which substituted, in par. (10), "United States attorneys" for "district attorneys". See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision note thereunder.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 3 of Pub. L. 85-762 provided in part that: "The provisions of this Act which amend the Interstate Commerce Act, as amended [this section and sections 304a, 908, and 1006a of this title], shall apply only to causes of action which accrue on or after the effective date of this Act [August 26, 1958]."

EFFECTIVE DATE OF 1940 AMENDMENT

Act Sept. 18, 1940, § 11(c), provided that: "The amendments made by subsection (a) of this section to paragraph (3)(a) and (c) of section 16 of the Interstate Commerce Act, as amended [par. (3), subds. (a) and (c) of this section], shall apply only in the case of causes of action accruing after the date this section takes effect."

ABOLITION OF COMMERCE COURT

Act Oct. 22, 1913, abolished the Commerce Court, formerly referred to in the text of pars. (11) and (12), and transferred its jurisdiction to the district courts.

REPARATION RECOMMENDATION

Prior authority for a reparation recommendation was contained in sections 14 and 15 of act Feb. 4, 1887, known as the Interstate Commerce Act, which enacted sections 14 and 15, respectively, of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Effect of rules 44 and 54 on this section, see note by Advisory Committee under rules 44 and 54, Title 28, Appendix, Judiciary and Judicial Procedure.

Judgment and costs, see rule 54.

Proof of official records, see rule 44.

CROSS REFERENCES

Attorney General, duties in actions to enforce orders of Commission, see section 2323 of Title 28, Judiciary and Judicial Procedure.

Criminal prosecutions for violations of the prohibitions of this chapter generally, see section 10 of this title.

Enforcement and review of orders of Commission, see sections 2321 to 2325 of Title 28, Judiciary and Judicial Procedure.

Injunction restraining enforcement of order of Commission, three-judge court required, see section 2325 of Title 28.

Jurisdiction of district court of civil action to enforce orders of Commission, see section 1336 of Title 28.

Motor Carrier Act, application of this section to, see section 304 of this title.

Payment of freight, commencement of action for, see section 3 of this title.

Rehearings of proceedings before Commission, see section 17 of this title.

United States as party, see section 2322 of Title 28, Judiciary and Judicial Procedure.

Venue of actions to enforce orders of Commission, see section 1398 of Title 28.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3, 19a, 304, 1655 of this title.

§ 16a. Repealed. Sept. 18, 1940, ch. 722, title I, § 12, 54 Stat. 913

Section, act Feb. 4, 1887, ch. 104, pt. I, § 16a, as added June 29, 1906, ch. 3591, § 6, 34 Stat. 592, related to rehearings by Commission. See section 17 of this title.

§ 17. Commission procedure; delegation of duties; rehearings

(1) Divisions of Commission; organization; composition

The Commission is authorized by its order to divide the members thereof into as many divi-

sions (each to consist of not less than three members) as it may deem necessary, which may be changed from time to time. Such divisions shall be designated, respectively, division one, division two, and so forth, or by a term descriptive of the principal subject, work, business, or function assigned or referred to such divisions. The Commission may designate one or more of its divisions as appellate divisions. Any Commissioner may be assigned to such division or divisions as the Commission may direct, and the senior in service of the Commissioners constituting a division shall act as chairman thereof unless otherwise directed by the Commission. When a vacancy occurs in any division or when a Commissioner because of absence, or other cause, is unable to serve thereon, the Chairman of the Commission or any Commissioner designated by him for that purpose may serve temporarily on such division until the Commission otherwise orders.

(2) Reference of matters to divisions, individual Commissioners or boards

The Commission may by order direct that any of its work, business, or functions under any provision of law (except matters required to be referred to joint boards by section 305 of this title, and except functions vested in the Commission under this section), or any matter which shall have been or may be referred to it by Congress or by either branch thereof, be assigned or referred to any division, to an individual Commissioner, or to a board to be composed of three or more eligible employees of the Commission (hereinafter in this section called a "board") to be designated by such order, for action thereon, and the Commission may by order at any time amend, modify, supplement, or rescind any such assignment or reference. The following classes of employees shall be eligible for designation by the Commission to serve on such boards: examiners, directors or assistant directors of bureaus, chiefs of sections, and attorneys. The assignment or reference, to divisions, of work, business, or functions relating to the lawfulness of rates, fares, or charges shall be made according to the character of regulation to be exercised and not according to the kind or class of the carriers involved or to the form or mode of transportation in which such carriers may be engaged. When an individual Commissioner, or any employee, is unable to act upon any matter so assigned or referred because of absence or other cause, the Chairman of the Commission may designate another Commissioner or employee, as the case may be, to serve temporarily until the Commission otherwise orders.

(3) Conduct of proceedings; seal; oaths; quorum; rules

The Commission shall conduct its proceedings under any provision of law in such manner as will best conduce to the proper dispatch of business and to the ends of justice. The Commission shall have an official seal, which shall be judicially noticed. Any member of the Commission, the Secretary of the Commission, or any member of a board may administer oaths and affirmations and any member of the Commission or the Secretary of the Commission (or any member of a board in connection with the performance of any work, business, or functions referred under this section to a board upon which he serves) may sign subpenas. A majority of the Commission, of a division, or of a board shall constitute a quorum for the transaction of business. The Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, or before any division, individual Commissioner, or board, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before the Commission or any division, individual Commissioner, or board and be heard in person or by attorney. Every vote and official act of the Commission, or of any division, individual Commissioner, or board, shall be entered of record, and such record shall be made public upon the request of any party interested. All hearings before the Commission, a division, individual Commissioner, or board shall be public upon the request of any party interested. No Commissioner or employee shall participate in any hearing or proceeding in which he shall have any pecuniary interest.

(4) Powers of divisions, boards, etc.; effect of orders, etc.

A division, an individual Commissioner, or a board shall have authority to hear and determine, order, certify, report, or otherwise act as to any work, business, or functions assigned or referred thereto under the provisions of this section, and with respect thereto shall have all the jurisdiction and powers conferred by law upon the Commission, and be subject to the same duties and obligations. The secretary and seal of the Commission shall be the secretary and seal of each division, individual Commissioner, or board. Except as otherwise provided in this section, any order, decision, or requirement of a division, an individual Commissioner, or a board, with respect to any matter so assigned or referred, shall have the same force and effect, and may be made and evidenced in the same manner as if made or taken by the Commission.

(5) Findings, etc., of Commissioner or board; accompanying statement and recommended order; copies to parties; exceptions; recommended order as Commission's order; delegation of duties to employee boards

Any finding, report, or requirement of an individual Commissioner or board, with respect to any matter so assigned or referred involving the taking of testimony at a public hearing, shall be accompanied by a statement in writing of the reasons therefor, together with a recommended order, which shall be filed with the Commission. Copies thereof shall be served upon interested parties (including, in proceedings under chapter 8 of this title, persons specified in section 305(e) of this title), who may file exceptions thereto, but if within twenty days after service upon such persons, or within such further period as the Commission or a duly designated division thereof may authorize, no exceptions shall have been filed, such recommended order shall become the order of the Commission and become effective unless within such period the order shall have been stayed or

postponed by the Commission or by a duly designated division thereof. The Commission, or a duly designated division thereof, upon its own motion may, and where exceptions are filed it shall, reconsider the matter either upon the same record or after further hearing, and such recommended order shall thereupon be stayed or postponed pending final determination thereof. When deemed by the Commission to be appropriate for the efficient and orderly conduct of its business, it may authorize duly designated employee boards to perform, under this paragraph, functions of the same character as those which may be performed thereunder by duly designated divisions.

(6) Rehearing, reargument, or reconsideration of decisions, orders, and requirements

After a decision, order, or requirement shall have been made by the Commission, a division, and individual Commissioner, or a board, or after an order recommended by an individual Commissioner or a board shall have become the order of the Commission as provided in paragraph (5) of this section, any party thereto may at any time, subject to such limitations as may be established by the Commission as hereinafter authorized, make application for rehearing, reargument, or reconsideration of the same, or of any matter determined therein. Such applications shall be governed by such general rules as the Commission may establish. Any such application, if the decision, order, or requirement was made by the Commission, shall be considered and acted upon by the Commission. If the decision, order, or requirement was made by a division, an individual Commissioner, or a board, such application shall be considered and acted upon by the Commission or referred to an appropriate appellate division for consideration and action. Rehearing, reargument, or reconsideration may be granted if sufficient reason therefor be made to appear; but the Commission may, from time to time, make or amend general rules or orders establishing limitations upon the right to apply for rehearing, reargument, or reconsideration of a decision, order, or requirement of the Commission or of a division so as to confine such right to proceedings, or classes of proceedings, involving issues of general transportation importance. Notwithstanding the foregoing provisions of this paragraph, any application for rehearing, reargument, or reconsideration of a matter assigned or referred to an individual Commissioner or a board, under the provisions of paragraph (2) of this section, if such application shall have been filed within twenty days after the recommended order in the proceeding shall have become the order of the Commission as provided in paragraph (5) of this section, and if such matter shall not have been reconsidered or reheard as provided in said paragraph, shall be referred to an appropriate appellate division of the Commission and such division shall reconsider the matter either upon the same record or after a further hearing.

(7) Reversal or modification after rehearing, etc.

If after rehearing, reargument, or reconsideration of a decision, order, or requirement of a division, an individual Commissioner, or board it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission or appellate division may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after rehearing, reargument, or reconsideration, reversing, changing, or modifying the original determination shall be subject to the same provisions with respect to rehearing, reargument, or reconsideration as an original order.

(8) Stay of decisions, etc., not effective at time of application for rehearing, etc.

Where application for rehearing, reargument, or reconsideration of a decision, order, or requirement of a division, an individual Commissioner, or board is made in accordance with the provisions of this section and the rules and regulations of the Commission, and the decision, order, or requirement has not yet become effective, the decision, order, or requirement shall be stayed or postponed pending disposition of the matter by the Commission or appellate division; but otherwise the making of such an application shall not excuse any person from complying with or obeying the decision, order, or requirement, or operate to stay or postpone the enforcement thereof, without the special order of the Commission.

(9) Administrative hearing and review procedures for decisions, orders, reports, etc.; judicial relief; applicability

(a) Whenever the term "hearing" is used in this chapter, such term shall be construed to include an opportunity for the submission of all evidence in written form, followed by an opportunity for briefs, written statements, or conferences of the parties, such conferences to be chaired by a division, an individual Commissioner, an administrative law judge, an employee board, or any other designated employee of the Commission.

(b) With respect to any matter involving a common carrier by railroad subject to this chapter, whenever the Commission assigns the initial disposition to any of such matter before the Commission to an administrative law judge, individual Commissioner, employee board, or division or panel of the Commission, such judge, Commissioner, board, division, or panel shall—

(i) complete all evidentiary proceedings with respect to such matter within 180 days after its assignment; and

(ii) with respect to any matter so assigned which involves written submissions or the taking of testimony at a public hearing, submit in writing to the Commission, within 120 days after the completion of all evidentiary proceedings, an initial decision, report, or order containing—

(A) specific findings of fact;

(B) specific and separate conclusions of law;

(C) a recommended order; and

(D) any justification in support of such findings of fact, conclusions of law, and order.

The Commission, or a duly designated division thereof, may, in its discretion, void any requirement for an initial decision, report, or order, and, in appropriate cases, may direct that any

matter shall be considered forthwith by the Commission or such division, if it concludes that the matter involves a question of agency policy, a new or novel issue of law, or an issue of general transportation importance, or if the due and timely execution of its functions so requires. Whenever an initial decision, report, or order is submitted, copies thereof shall be served upon interested parties. Any such party may file an appeal with the Commission, with respect to such initial decision or report. If no such appeal is filed within 20 days after such service, or within such further period (not to exceed 20 days) as the Commission, or a duly designated division thereof, may authorize, the order set forth in such initial decision or report shall become the order of the Commission and shall become effective unless, within such period, the order shall have been stayed or postponed by the Commission pursuant to subdivision (d) or (e).

(c) The Commission, or a duly designated division thereof, may, upon its own initiative, and shall, in any case in which an appeal is filed under subdivision (b), review the matter upon the same record or upon the basis of a further hearing. Any such appeal shall be considered and acted upon by the Commission, or a duly designated division thereof, within 180 days after the date on which such appeal is filed. Any such decision, report, or order shall be stayed pending the determination of such appeal. Such a review shall be conducted in accordance with section 557 of title 5, and such rules (limiting and defining the issues and pleadings upon review) as the Commission may adopt in conformance with section 557(b) of such title 5. The Commission may, in its discretion and on such terms and conditions as it may prescribe, authorize duly designated employee boards to perform functions under this paragraph of the same character as those which may be performed by a duly designated division of the Commission (other than the decision of any appeal under this paragraph which may be further appealed to the Commission).

(d) Any decision, order, or requirement of the Commission, or of a duly designated division thereof, shall become effective 30 days after it is served on the parties thereto, unless the Commission provides for such decision, order, or requirement, or any applicable rule, to become effective at an earlier date. Any interested party to a decision, order or requirement of a duly designated division of the Commission may petition the Commission for rehearing, reargument, or other reconsideration, subject to such rules and limitations as the Commission may establish. If the Commission finds that a decision, order, or requirement presents a matter of general transportation importance, or if it finds that clear and convincing new evidence has been presented or that changed circumstances exist which would materially affect such decision, order, or requirement, the Commission may reconsider such decision, order, or requirement, and it may, in its discretion, stay the effective date of such decision, order, or requirement. If the Commission reconsiders a decision, order, or requirement, it must complete the process and issue its final order not more than 120 days after the date on which it grants the application for reconsideration.

(e) The Commission may, in its discretion, extend any time period set forth in this paragraph for a period of not more than 90 days, if a majority of the Commissioners, by public vote, agree to such extension. The Commission shall submit an annual report in writing to each House of Congress setting forth each extension granted pursuant to this subdivision (classified by the type of proceeding involved), and stating the reasons for each such extension and the duration thereof.

(f) In extraordinary situations in which an extension granted pursuant to subdivision (e) is not sufficient to allow for completion of necessary proceedings, the Commission may, in its discretion, grant a further extension if—

(i) not less than 7 of the Commissioners, by public vote, agree to such further extension; and

(ii) not less than 15 days prior to expiration of the extension granted pursuant to subdivision (e), the Commission reports in writing to the Congress that such further extension has been granted, together with—

(A) a full explanation of the reasons for such further extension;

(B) the anticipated duration of such further extension;

(C) the issues involved in the matter before the Commission; and

(D) the names of personnel of the Commission working on such matter.

(g) The Commission may, at any time upon its own initiative, on grounds of material error, new evidence, or substantially changed circumstances—

(i) reopen any proceeding;

(ii) grant rehearing, reargument, or reconsideration with respect to any decision, order, or requirement; and

(iii) reverse, modify, or change any decision, order, or requirement.

The Commission may establish rules allowing interested parties to petition for leave to request reopening and reconsideration based upon material error, new evidence, or substantially changed circumstances.

(h) Notwithstanding any other provision of this Act, any decision, order, or requirement of the Commission, or of a duly designated division thereof, shall be final on the date on which it is served. A civil action to enforce, enjoin, suspend, or set aside such a decision, order, or requirement, in whole or in part, may be brought after such date in a court of the United States pursuant to the provisions of law which are applicable to suits to enforce, enjoin, suspend, or set aside orders of the Commission.

(i) Notwithstanding the provisions of paragraphs (5), (6), (7), and (8), of this section, the provisions of this paragraph shall govern the disposition of, and shall apply only to, any matter before the Commission which involves a common carrier by railroad subject to this chapter, except that the provisions of other sections of this chapter pertaining to deadlines in Commission proceedings shall govern to the extent that they are inconsistent with the pro-

visions pertaining to deadlines contained in this paragraph.

(j) Reports in writing and other written statement (including, but not limited to, any report, order, decision and order, vote, notice, letter, policy statement, rule, or regulation) of any official action of the Commission (whether such action is taken by the Commission, a division thereof, any other group of Commissioners, a single Commissioner, an employee board, an administrative law judge, or any other individual or group of individuals who are authorized to take any official action on behalf of the Commission) shall indicate (i) the official designation of the individual or group taking such action (ii) the name of each individual taking, or participating in taking, such action, and (iii) the vote or position of each such participating individual. If any individual who is officially designated as a member of a group which takes any such action does not participate in such action, the written statement of such action shall indicate that such individual did not participate. Each individual who participates in taking any such action shall have the right to express his individual views as part of the written statement of such action. The written statement of any such action shall be made available to the public in accordance with Federal law.

(10) Judicial relief from decisions, etc., upon denial or other disposition of application for rehearing, etc.

When an application for rehearing, reargument, or reconsideration of any decision, order, or requirement of a division, an individual Commissioner, or a board with respect to any matter assigned or referred to him or it shall have been made and shall have been denied, or after rehearing, reargument, or reconsideration otherwise disposed of, by the Commission or an appellate division, a suit to enforce, enjoin, suspend, or set aside such decision, order, or requirement, in whole or in part, may be brought in a court of the United States under those provisions of law applicable in the case of suits to enforce, enjoin, suspend, or set aside orders of the Commission, but not otherwise.

(11) Reference of administrative matters to examiners

Any matter arising in the administration of chapter 8 of this title as to which a hearing is to be held may be referred to an examiner of the Commission, for action thereon, subject to the conditions and limitations provided in this section in the case of reference of work, business or functions, as to which a hearing is to be held, to an individual Commissioner or board.

(12) Intervention of representatives of employees

Representatives of employees of a carrier, duly designated as such, may intervene and be heard in any proceeding arising under this chapter and chapters 8 and 12 of this title affecting such employees.

(13) Admission to practice before Commission

The Commission is authorized to promulgate reasonable rules and regulations relating to admission to practice before it, and is authorized to impose a reasonable fee for such admission, and such fees shall be covered into the Treasury of the United States as miscellaneous receipts.

(14) Formal investigative proceedings; conclusion or termination requirements

(a) Any formal investigative proceeding with respect to a common carrier by railroad which is instituted by the Commission after February 5, 1976, shall be concluded by the Commission with administrative finality within 3 years after the date on which such proceeding is instituted. Any such proceeding which is not so concluded by such date shall automatically be dismissed.

(b) Within 1 year after February 5, 1976, the Commission shall conclude or terminate, with administrative finality, any formal investigative proceeding with respect to a common carrier by railroad which was instituted by the Commission on its own initiative and which has been pending before the Commission for a period of 3 or more years following the date of the order which instituted such proceeding.

(15) Access to information by Congressional committees; procedures; limitations; definition

Whenever the Committee on Interstate and Foreign Commerce of the House of Representatives or the Committee on Commerce, Science, and Transportation of the Senate makes a written request for documents which are in the possession or under the control of the Commission and which relate to any matter involving a common carrier by railroad subject to this chapter, the Commission shall, within 10 days after the date of receipt of such request, submit such documents (or copies thereof) to such committee, or submit a report in writing to such committee stating the reason why such documents have not been so submitted, and the anticipated date on which they will be submitted. If the Commission transfers any document in its possession or under its control to any other agency or to any person, it shall condition such transfer on the guaranteed return by the transferee of such document to the Commission for purposes of complying with the preceding sentence. This paragraph shall not apply to documents which have been obtained by the Commission from persons subject to regulation by the Commission, and which contain trade secrets or commercial or financial information of a privileged or confidential nature. This paragraph shall not be deemed to restrict any other authority of either House of Congress, or any committee or subcommittee thereof, to obtain documents. For purposes of this paragraph, the term "document" means any book, paper, correspondence, memorandum, or other record, or any copy thereof.

(Feb. 4, 1887, ch. 104, pt. I, § 17, 24 Stat. 385; Mar. 2, 1889, ch. 382, § 6, 25 Stat. 861; Aug. 9, 1917, ch. 50, § 2, 40 Stat. 270; Feb. 28, 1920, ch. 91, §§ 430–432, 41 Stat. 492, 493; Feb. 28, 1933, ch. 136, 47 Stat. 1368; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Sept. 18, 1940, ch. 722, title I, § 12, 54 Stat. 913; Sept. 14, 1961, Pub. L. 87-247, 75 Stat. 517; Feb. 5, 1976, Pub. L. 94-210, title III, §§ 301, 303, 90 Stat. 47, 48, 50; Oct. 19, 1976, Pub. L. 94-555, title II, § 220(j), 90 Stat. 2630; S. Res. 4, Feb. 4, 1977.)

REFERENCES IN TEXT

This Act, referred to in par. (9)(h), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 1 et seq.) and chapters 8, 12, 13, and 19

(§§ 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

PRIOR PROVISIONS

Provisions relating to rehearings were formerly contained in section 16a of this title prior to repeal by act Sept. 18, 1940, ch. 722, title I, § 12, 54 Stat. 913.

AMENDMENTS

1976—Par. (9), Pub. L. 94-210, § 303(a), added par. (9). Former par. (9) was redesignated as (10).

Par. (9)(e). Pub. L. 94-555 substituted "paragraph" for "section" following "set forth in this".

Par. (10). Pub. L. 94-210, § 303(a), redesignated par. (9) as (10). Former par. (10) was redesignated as (11).

Par. (11). Pub. L. 94-210, § 303(a), redesignated par. (10) as (11). Former par. (11) was redesignated as (12).

Par. (12). Pub. L. 94-210, § 303(a), redesignated par. (11) as (12). Former Par. (12) was redesignated as (13).

Par. (13). Pub. L. 94-210, § 303(a), redesignated par. (12) as (13).

Par. (14). Pub. L. 94-210, § 303(b) added par. (14).

Par. (15). Pub. L. 94-210, § 301, added par. (15).

1961—Pub. L. 87-247 authorized the Commission to delegate duties to employee boards of the same character as those performed by designated divisions.

1940—Act Sept. 18, 1940, amended section generally, revising old text and incorporating new matter.

1935—Act Aug. 9, 1935, substituted "this part", which has been translated as "this chapter", for "this Act", meaning act Feb. 4, 1887, known as the Interstate Commerce Act.

1933—Act Feb. 28, 1933, added a paragraph "6" which authorized the Commission to delegate its functions to an individual Commissioner or board of employees of the Commission, fixed the powers and duties of the individual Commissioners or boards, and provided for reconsideration or rehearing of decisions of individual Commissioners or boards.

1920—Act Feb. 28, 1920, numbered the paragraphs of this section, inserted provision that a division shall consist of not less than three members, and repealed paragraphs which related to number of members of a division required to participate in rate and physical valuation proceedings and, fixing salary of the secretary of the Commission.

1917—Act Aug. 9, 1917, amended section generally and authorized the Commission to divide its members into divisions and to assign members and work to the divisions, conferred full jurisdiction on divisions, provided for number of members of a division required to participate in decisions, and fixed the salary of the secretary of the Commission.

1889—Act Mar. 2, 1889, added provision authorizing the signing of subpoenas.

CHANGE OF NAME

The Committee on Commerce of the Senate was abolished and replaced by the Committee on Commerce, Science, and Transportation, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-555 effective on October 1, 1976, see section 303 of Pub. L. 94-555, set out as an Effective Date of 1976 Amendment note under section 543 of Title 45, Railroads.

REFORM OF RULES OF PRACTICE BEFORE COMMISSION; PROCEDURE FOR APPROVAL OR DISAPPROVAL OF PROPOSALS; EFFECTIVE DATE; FURTHER REVIEW AND REVISION

Section 305 of Pub. L. 94-210 provided that:

"(a) Within 360 days after the date of enactment of this Act [Feb. 5, 1976], the Commission shall study, develop, and submit to the Congress an initial proposal setting forth rules of practice under which the Commission proposes to conduct all adjudicatory and rulemaking proceedings with respect to any matter involving a common carrier by railroad subject to this part [this chapter]. Such rules of practice before the Commission shall be consistent with existing law, shall take into consideration the varying nature of proceedings before the Commission, and shall include—

"(1) specific time limits upon the filing and disposition of all complaints, applications, petitions, pleadings, motions, appeals, and rulemaking proceedings before an administrative law judge, individual Commissioner, review board, division, or panel of the Commission, or the full Commission;

"(2) specific methods of taking testimony, receiving evidence, hearing cross-examination, and the modification of such procedures so as to facilitate the timely execution of the functions of the Commission;

"(3) utilization of additional administrative law judges or the assignment of employees of the Office, in complex adjudicatory or rulemaking proceedings, so as to facilitate proper focus and timely resolution of the issues within the required time limits; and

"(4) specific remedies in any case of failure to observe required time limits.

"(b) Within 420 days after the date of enactment of this Act [Feb. 5, 1976], the Administrative Conference of the United States shall submit to the Congress and to the Commission its comments on the rules of practice before the Commission proposed pursuant to subsection (a) of this section, together with such recommendations as it considers appropriate.

"(c) Within 30 days after the receipt of comments submitted pursuant to subsection (b) of this section, the Commission shall consider such comments and shall submit to the Congress a final proposal setting forth the rules of practice before the Commission with respect to matters involving common carriers by railroad. Such rules of practice shall take effect at the end of the first period of 60 calendar days of continuous session of the Congress after the date of submission of such final proposal, unless either the Senate or the House of Representatives adopts a resolution during such period stating that it does not approve such final proposal. If no resolution is adopted as provided in the preceding sentence, the Commission shall adopt such proposed rules of practice. For purposes of this subsection, continuity of session of the Congress is broken only by an adjournment sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded from the computation of the 60-day period.

"(d) If either the Senate or the House of Representatives passes a resolution of disapproval under subsection (c) of this section, the Commission shall develop a revised proposal setting forth the rules of practice before the Commission pursuant to this section. Within 60 days after the date of such disapproval, each such revised proposal shall be submitted to the Congress by the Commission for review pursuant to such subsection (c).

"(e) The Commission shall periodically, but not less than once every 3 years, review the rules of practice adopted pursuant to subsection (c) of this section, and shall revise such rules as it considers necessary."

CROSS REFERENCES

District court jurisdiction of orders, see section 1336 of Title 28, Judiciary and Judicial Procedure.

Enforcement and review of Interstate Commerce Commission orders, see sections 2321 to 2325 of Title 28.

Motor Carrier Act, application of this section to, see section 305 of this title.

Venue of action for enforcement, suspension, etc., of orders, see section 1398 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5, 305, 916, 1017 of this title.

§ 18. Employees; appointment and compensation; witness fees; expenses

(1) Commissioners' salaries; secretary and employees; compensation; witness fees

Each commissioner shall receive an annual salary, payable in the same manner as the judges of the courts of the United States. The Commission shall appoint a secretary. The Commission shall have authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its duties. Until otherwise provided by law, the Commission may hire suitable offices for its use, and shall have authority to procure all necessary office supplies. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(2) Expenses of Commission

All of the expenses of the Commission, including all necessary expenses for transportation incurred by the commissioners, or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission.

(Feb. 4, 1887, ch. 104, pt. I, §§ 17, 18, 24, 24 Stat. 386, 387; Mar. 2, 1889, ch. 382, § 7, 25 Stat. 861; June 29, 1906, ch. 3591, § 8, 34 Stat. 595; Aug. 9, 1917, ch. 50, §§ 1-3, 40 Stat. 270; Feb. 28, 1920, ch. 91, §§ 433, 440, 41 Stat. 493, 497.)

CODIFICATION

Section is composed of sections 17, 18, and 24 of act Feb. 4, 1887, known as the Interstate Commerce Act of Feb. 4, 1887. Section 17, as amended by section 2 of act Aug. 9, 1917, provided in part for salary of secretary of Commission. The remainder of section 17 is set out as section 17 of this title. Section 18 provided for compensation of commissioners, appointment and compensation of a secretary, employment of personnel, furnishing of office space and supplies, and payment of witness fees and expenses of Commission. Section 24, as added by act June 29, 1906, provided in part for increase in annual compensation of Commissioners. The remainder of section 24 is set out as section 11 of this title.

Provisions of subsec. (1) which prescribed the annual salaries of the Commissioners were omitted as obsolete and superseded by the Executive Schedule, see sections 5314(23) and 5315(62) of Title 5, Government Organization and Employees. Provisions which prescribed a salary for the Secretary to the Commission were omitted as obsolete and superseded. Sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the Classification Act of 1923 and all other laws or parts of laws inconsistent with the 1949 Act. The Classification Act of 1949 was repealed by Pub. L. 89-554, Sept. 6, 1966, § 8(a), 80 Stat. 632, and reenacted as chapter 51 and subchapter III of chapter 53 of Title 5. Section 5102 of Title 5 now contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Civil Service Commission to determine the applicability to specific positions and employees.

AMENDMENTS

1920—Act Feb. 28, 1920, numbered paragraphs and increased annual compensation of Commissioners from $10,000 to $12,000 and annual salary of secretary from $5,000 to $7,500.

1917—Act Aug. 9, 1917, continued annual compensation of Commissioners at $10,000, increased annual salary of the secretary of the Commission from $3,500 to $5,000, and repealed prior provision fixing salary of the secretary.

1906—Act June 29, 1906, increased annual compensation of Commissioners from $7,500 to $10,000.

1889—Act Mar. 2, 1889, among other changes, omitted necessity for approval of Secretary of Interior of employment and compensation of employees and of expense vouchers, and authorized Commission to hire offices and procure supplies instead of having them furnished by Secretary of Interior.

COMPENSATION OF CHAIRMAN AND MEMBERS OF INTERSTATE COMMERCE COMMISSION

Compensation of chairman and members, see sections 5314(23) and 5315(62) of Title 5, Government Organization and Employees.

TEMPORARY SALARY REDUCTIONS

The salaries of the commissioners of the Interstate Commerce Commission were reduced to $10,000 each per annum for the fiscal years ending June 30, 1936, 1937, and 1938 by acts Feb. 2, 1935, ch. 3, § 3, 49 Stat. 19; March 19, 1936, ch. 156, § 4, 49 Stat. 1183; June 28, 1937, ch. 396, 50 Stat. 352.

CROSS REFERENCES

Attendance of witnesses, see section 12 of this title.

Appointment, term and qualifications of commissioners, see section 11 of this title.

Classification of civilian employees of Government, see section 5101 et seq. of Title 5, Government Organization and Employees.

Fees of witnesses, see section 1851 et seq. of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1655 of this title.

§ 19. Office and sessions

The principal office of the Commission shall be in the city of Washington, where its general sessions shall be held; but whenever the convenience of the public or of the parties may be promoted or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States. It may, by one or more of the commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this chapter.

(Feb. 4, 1887, ch. 104, pt. I, § 19, 24 Stat. 386; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543.)

AMENDMENTS

1935—Act Aug. 9, 1935, substituted "this part", which has been translated as "this chapter," for "this Act", meaning act Feb. 4, 1887, known as the Interstate Commerce Act.

§ 19a. Valuation of property of carriers

(a) Physical valuation of property of carriers; classification and inventory

The Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this chapter, except any street, suburban, or interurban electric railway which is not operat-

ed as a part of a general steam railroad system of transportation; but the Commission may in its discretion investigate, ascertain, and report the value of the property owned or used by any such electric railway subject to the provisions of this chapter whenever in its judgment such action is desirable in the public interest. To enable the Commission to make such investigation and report, it is authorized to employ such experts and other assistants as may be necessary. The Commission may appoint examiners who shall have power to administer oaths, examine witnesses, and take testimony. The Commission shall, subject to the exception hereinbefore provided for in the case of electric railways, make an inventory which shall list the property of every common carrier subject to the provisions of this chapter in detail, and show the value thereof as hereinafter provided, and shall classify the physical property, as nearly as practicable, in conformity with the classification of expenditures for road and equipment, as prescribed by the Interstate Commerce Commission.

(b) Cost of property; elements considered in determination; gifts, grants, etc.

First. In such investigation said Commission shall ascertain and report in detail as to each piece of property, other than land owned or used by said common carrier for its purposes as a common carrier, the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation, and an analysis of the methods by which these several costs are obtained, and the reason for their differences, if any. The Commission shall in like manner ascertain and report separately other values, and elements of value, if any, of the property of such common carrier, and an analysis of the methods of valuation employed, and of the reasons for any differences between any such value and each of the foregoing cost values.

Second. Such investigation and report shall state in detail and separately from improvements the original cost of all lands, rights of way, and terminals owned or used for the purpose of a common carrier, and ascertained as of the time of dedication to public use, and the present value of the same.

Third. Such investigation and report shall show separately the property held for purposes other than those of a common carrier, and the original cost and present value of the same, together with an analysis of the methods of valuation employed.

Fourth. In ascertaining the original cost to date of the property of such common carrier the Commission, in addition to such other elements as it may deem necessary, shall investigate and report upon the history and organization of the present and of any previous corporation operating such property; upon any increases or decreases of stocks, bonds, or other securities, in any reorganization; upon moneys received by any such corporation by reason of any issues of stocks, bonds, or other securities; upon the syndicating, banking, and other financial arrangements under which such issues were made and the expense thereof; and upon the net and gross earnings of such corporations; and shall also ascertain and report in such detail as may be determined by the Commission upon the expenditure of all moneys and the purposes for which the same were expended.

Fifth. The Commission shall ascertain and report the amount and value of any aid, gift, grant of right of way, or donation, made to any such common carrier, or to any previous corporation operating such property, by the Government of the United States or by any State, county, or municipal government, or by individuals, associations, or corporations; and it shall also ascertain and report the grants of land to any such common carrier, or any previous corporation operating such property, by the Government of the United States, or by any State, county, or municipal government, and the amount of money derived from the sale of any portion of such grants and the value of the unsold portion thereof at the time acquired and at the present time, also, the amount and value of any concession and allowance made by such common carrier to the Government of the United States, or to any State, county, or municipal government in consideration of such aid, gift, grant, or donation.

(c) Investigation; procedure and forms

Except as herein otherwise provided, the Commission shall have power to prescribe the method of procedure to be followed in the conduct of the investigation, the form in which the results of the valuation shall be submitted, and the classification of the elements that constitute the ascertained value, and such investigation shall show the value of the property of every common carrier as a whole and separately the value of its property in each of the several States and Territories and the District of Columbia, classified and in detail as herein required.

(d) Time for beginning investigation; reports to Congress

Such investigation shall be commenced within sixty days after March 1, 1913, and shall be prosecuted with diligence and thoroughness, and the result thereof reported to Congress at the beginning of each regular session until completed.

(e) Aid of carrier required; rules and regulations; inspection of records

Every common carrier subject to the provisions of this chapter shall furnish to the Commission or its agents from time to time and as the Commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier, and shall grant to all agents of the Commission free access to its right-of-way, its property, and its accounts, records, and memoranda whenever and wherever requested by any such duly authorized agent, and every common carrier is directed and required to cooperate with and aid the Commission in the work of the valuation of its property in such further particulars and to such extent as the Commission may require and direct, and all rules and regulations made by the Commission for the purpose of administering the provisions of this section and section 20 of this title shall have the full force and effect of law. Unless otherwise ordered by the

Commission, with the reasons therefor, the records and data of the Commission shall be open to the inspection and examination of the public.

(f) Valuation of extensions and improvements; revisions; reports

Upon completion of the original valuations herein provided for, the Commission shall thereafter keep itself informed of all new construction, extensions, improvements, retirements, or other changes in the condition, quantity, use, and classification of the property of all common carriers as to which original valuations have been made, and of the cost of all additions and betterments thereto and of all changes in the investment therein, and may keep itself informed of current changes in costs and values of railroad properties, in order that it may have available at all times the information deemed by it to be necessary to enable it to revise and correct its previous inventories, classifications, and values of the properties; and when deemed necessary, may revise, correct, and supplement any of its inventories and valuations.

(g) Reports and information to be furnished by carriers

To enable the Commission to carry out the provisions of paragraph (f) of this section, every common carrier subject to the provisions of this chapter shall make such reports and furnish such information as the Commission may require.

(h) Notice of completion of tentative valuation; protests; finality of report

Whenever the Commission shall have completed the tentative valuation of the property of any common carrier, as herein directed, and before such valuation shall become final, the Commission shall give notice by registered mail or by certified mail to the said carrier, the Attorney General of the United States, the governor of any State in which the property so valued is located, and to such additional parties as the Commission may prescribe, stating the valuation placed upon the several classes of property of said carrier, and shall allow thirty days in which to file a protest of the same with the Commission. If no protest is filed within thirty days, said valuation shall become final as of the date thereof.

(i) Protests; hearings; changes in valuations; final valuation and classification

If notice of protest is filed the Commission shall fix a time for hearing the same, and shall proceed as promptly as may be to hear and consider any matter relative and material thereto which may be presented in support of any such protest so filed as aforesaid. If after hearing any protest of such tentative valuation under the provisions of this chapter the Commission shall be of the opinion that its valuation should not become final, it shall make such changes as may be necessary, and shall issue an order making such corrected tentative valuation final as of the date thereof. All final valuations by the Commission and the classification thereof shall be published and shall be prima facie evidence of the value of the property in all proceedings under this chapter as of the date of the fixing thereof, and in all judicial proceedings for the enforcement of this chapter, and in all judicial proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission.

(j) Effect of evidence as to values; modification of orders

If upon the trial of any action involving a final value fixed by the Commission, evidence shall be introduced regarding such value which is found by the court to be different from that offered upon the hearing before the Commission, or additional thereto and substantially affecting said value, the court, before proceeding to render judgment shall transmit a copy of such evidence to the Commission, and shall stay further proceedings in said action for such time as the court shall determine from the date of such transmission. Upon the receipt of such evidence the Commission shall consider the same and may fix a final value different from the one fixed in the first instance, and may alter, modify, amend or rescind any order which it has made involving said final value, and shall report its action thereon to said court within the time fixed by the Court. If the Commission shall alter, modify, or amend its order, such altered, modified, or amended order shall take the place of the original order complained of and judgment shall be rendered thereon as though made by the Commission in the first instance. If the original order shall not be rescinded or changed by the Commission, judgment shall be rendered upon such original order.

(k) Receivers and trustees of carriers affected; noncompliance with law; penalty

The provisions of this section shall apply to receivers of carriers and operating trustees. In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with all the requirements of this section and in the manner prescribed by the Commission such carrier, receiver, or trustee shall forfeit to the United States the sum of $500 for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in section 16 of this title.

(l) Mandamus to compel compliance with law

The district courts of the United States shall have jurisdiction, upon the application of the Attorney General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of this section by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of this section.

(Feb. 4, 1887, ch. 104, pt. I, § 19a, as added Mar. 1, 1913, ch. 92, 37 Stat. 701, and amended Feb. 28, 1920, ch. 91, § 433, 41 Stat. 493; June 7, 1922, ch. 210, §§ 1, 2, 42 Stat. 624; June 16, 1933, ch. 91, title II, §§ 207, 208, 48 Stat. 221; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; June 11, 1960, Pub. L. 86-507, § 1(38), 74 Stat. 202.)

AMENDMENTS

1960—Subsec. (h). Pub. L. 86-507 substituted "registered mail or by certified mail" for "registered letter".

1935—Act Aug. 9, 1935, substituted "this part", which has been translated as "this chapter," for "this Act", meaning act Feb. 4, 1887, known as the Interstate Commerce Act.

1933—Par. (a). Act June 16, 1933, § 207, excepted street, suburban, or interurban electric railway not operated as part of general steam railroad system from investigation and report as to value by Commission other than at discretion of Commission in public interest.

Par. (f). Act June 16, 1933, § 208, provided that Commission keep informed of new construction, extensions, etc., or other changes in property of carriers, the cost of conditions and betterments, and changes in costs and values to enable Commission to revise and correct previous inventories, classifications, and values.

Par. (g). Act June 16, 1933, § 208, referred to provisions of paragraph (f) of this section instead of to the changes and corrections in valuations of property.

1922—Par. (b) (First). Act June 7, 1922, § 1, limited report to property other than land.

Par. (b) (Second). Act June 7, 1922, § 2, omitted from report statement as to original and present cost of condemnation and damages or of purchase in excess of original cost or present value of lands, rights of way, and terminals.

1920—Act Feb. 28, 1920, lettered the paragraphs.

FEDERAL RULES OF CIVIL PROCEDURE

Application of, see rules 44, 81, Title 28, Appendix, Judiciary and Judicial Procedure.

Effect of rules on this section, see notes by Advisory Committee under Rules 44 and 81.

CROSS REFERENCES

Transfer of records of valuations of property of carriers subject to Communications Act of 1934, see section 213 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5a, 52 of this title; title 48 section 751.

§ 20. Reports, records, and accounts of carriers; mandamus; liability of initial carrier for loss, etc.

(1) Reports from carriers and lessors

The Commission is authorized to require annual, periodical, or special reports from carriers, lessors, and associations (as defined in this section), to prescribe the manner and form in which such reports shall be made, and to require from such carriers, lessors, and associations specific and full, true, and correct answers to all questions upon which the Commission may deem information to be necessary, classifying such carriers, lessors, and associations as it may deem proper for any of these purposes. Such annual reports shall give an account of the affairs of the carrier, lessor, or association in such form and detail as may be prescribed by the Commission.

(2) Period covered by and time for making reports; oaths for reports

Said annual reports shall contain all the required information for the period of twelve months ending on the 31st day of December in each year, unless the Commission shall specify a different date, and shall be made out under oath and filed with the Commission at its office in Washington within three months after the close of the year for which the report is made, unless additional time be granted in any case by the Commission. Such periodical or special reports as may be required by the Commission under paragraph (1) of this section, shall also be under oath whenever the Commission so requires.

(3) Uniform cost and revenue accounting and reporting system for all common carriers by railroad subject to this chapter; promulgation of regulations and procedures; effective date; criteria; review and revision of system; authorization of appropriations

(a) The Commission shall, not later than June 30, 1977, issue regulations and procedures prescribing a uniform cost and revenue accounting and reporting system for all common carriers by railroad subject to this chapter. Such regulations and procedures shall become effective not later than January 1, 1978. Before promulgating such regulations and procedures, the Commission shall consult with and solicit the views of other agencies and departments of the Federal Government, representatives of carriers, shippers, and their employees, and the general public.

(b) In order to assure that the most accurate cost and revenue data can be obtained with respect to light density lines, main line operations, factors relevant in establishing fair and reasonable rates, and other regulatory areas of responsibility, the Commission shall identify and define the following items as they pertain to each facet of rail operations:

(i) operating and nonoperating revenue accounts;

(ii) direct cost accounts for determining fixed and variable cost for materials, labor, and overhead components of operating expenses and the assignment of such costs to various functions, services, or activities, including maintenance-of-way, maintenance of equipment (locomotive and car), transportation (train, yard and station, and accessorial services), and general and administrative expenses; and

(iii) indirect cost accounts for determining fixed, common, joint, and constant costs, including the cost of capital, and the method for the assignment of such costs to various functions, services, or activities.

(c) The accounting system established pursuant to this paragraph shall be in accordance with generally accepted accounting principles uniformly applied to all common carriers by railroad subject to this chapter, and all reports shall include any disclosure considered appropriate under generally accepted accounting principles or the requirements of the Commission or of the Securities and Exchange Commission. The Commission shall, notwithstanding any other provision of this section, to the extent possible, devise the system of accounts to be cost effective, nonduplicative, and compatible with the present and desired managerial and responsibility accounting requirements of the carriers, and to give due consideration to appropriate economic principles. The Commission should attempt, to the extent possible, to require that such data be reported or otherwise disclosed only for essential regulatory purposes, including rate change requests, abandonment of facilities requests, responsibility for peaks in demand, cost of service, and issuance of securities.

(d) In order that the accounting system established pursuant to this paragraph continue to conform to generally accepted accounting principles, compatible with the managerial responsibility accounting requirements of carriers, and in compliance with other objectives set forth in this section, the Commission shall periodically, but not less than once every 5 years, review such accounting system and revise it as necessary.

(e) There are authorized to be appropriated to the Commission for purposes of carrying out the provisions of this paragraph such sums as may be necessary, not to exceed $1,000,000, to be available for—

(i) procuring temporary and intermittent services as authorized by section 3109(b) of title 5, but at rates for individuals not to exceed $250 per day plus expenses; and

(ii) entering into contracts or cooperative agreements with any public agency or instrumentality or with any person, firm, association, corporation, or institution, without regard to section 5 of title 41.

(4) Depreciation charges

The Commission shall, as soon as practicable, prescribe for carriers the classes of property for which depreciation charges may properly be included under operating expenses, and the rate or rates of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. The Commission may, when it deems necessary, modify the classes and rates so prescribed. When the Commission shall have exercised its authority under the foregoing provisions of this paragraph, carriers shall not charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a rate of depreciation other than that prescribed therefor by the Commission, and no such carrier shall include under operating expenses any depreciation charge in any form whatsoever other than as prescribed by the Commission.

(5) Forms of accounts, records, and memoranda; access to records, etc., by Commission or agents

The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers and their lessors, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys, and it shall be unlawful for such carriers or lessors to keep any accounts, records, and memoranda contrary to any rules, regulations, or orders of the Commission with respect thereto. The Commission or any duly authorized special agent, accountant, or examiner thereof shall at all times have authority to inspect and copy any and all accounts, books, records, memoranda, correspondence, and other documents, of such carriers, lessors, and associations, and such accounts, books, records, memoranda, correspondence, and other documents, of any person controlling, controlled by, or under common control with any such carrier, as the Commission deems relevant to such person's relation to or transactions with such carrier. The Commission or its duly authorized special agents, accountants, or examiners shall at all times have access to all lands, buildings, or equipment of such carriers or lessors, and shall have authority under its order to inspect and examine any and all such lands, buildings, and equipment. Such carriers, lessors, and other persons shall submit their accounts, books, records, memoranda, correspondence, and other documents for the inspection and copying authorized by this paragraph, and such carriers and lessors shall submit their lands, buildings, and equipment to inspection and examination, to any duly authorized special agent, accountant, or examiner of the Commission, upon demand and the display of proper credentials.

(6) Persons furnishing cars or protection against elements; access to and forms of records, etc.; reports

The Commission or any duly authorized special agent, accountant, or examiner thereof shall at all times have authority to inspect and copy any and all accounts, books, records, memoranda, correspondence, and other documents, of persons which furnish cars or protective service against heat or cold to or on behalf of any carrier by railroad or express company subject to this chapter: *Provided, however,* That such authority shall be limited to accounts, books, records, memoranda, correspondence, or other documents which pertain or relate to the cars or protective service so furnished. The Commission shall further have authority, in its discretion, to prescribe the forms of any or all accounts, records, and memoranda which it is authorized by this paragraph to inspect and copy, and to require the persons furnishing such cars or protective service, as aforesaid, to submit such reports and specific and full, true, and correct answers to such questions, relative to such cars or service, as the Commission may deem necessary. Persons furnishing such cars or protective service shall submit their accounts, books, records, memoranda, correspondence, or other documents, to the extent above provided, for inspection or copying to any duly authorized special agent, accountant, or examiner of the Commission upon demand and the display of proper credentials.

(7) Penalties and forfeitures in connection with accounts, records, reports, etc.

(a) In case of failure or refusal on the part of any carrier, lessor, or other person to keep any accounts, records, and memoranda in the form and manner prescribed, under authority of this section, by the Commission, or to submit any accounts, books, records, memoranda, correspondence, or other documents to the Commission or any of its authorized agents, accountants, or examiners for inspection or copying, as required under this section, such carrier, lessor, or person shall forfeit to the United States not to exceed $500 for each such offense and for each day during which such failure or refusal continues.

(b) Any person who shall knowingly and willfully make, cause to be made, or participate in the making of, any false entry in any annual or other report required under this section to be filed, or in the accounts of any book of accounts or in any records or memoranda kept by

a carrier, or required under this section to be kept by a lessor or other person, or who shall knowingly and willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such accounts, records, or memoranda, or who shall knowingly and willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of the carrier, lessor, or person, or shall knowingly and willfully keep any accounts, records, or memoranda contrary to the rules, regulations, or orders of the Commission with respect thereto, or shall knowingly or willfully file with the Commission any false report or other document, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction to a fine of not more than five thousand dollars or imprisonment for not more than two years, or both such fine and imprisonment: *Provided*, That the Commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, correspondence, or documents of such carriers, lessors, or other persons as may, after a reasonable time, be destroyed, and prescribing the length of time the same shall be preserved.

(c) Any carrier or lessor, or person furnishing cars or protective service, or any officer, agent, employee, or representative thereof, who shall fail to make and file an annual or other report with the Commission within the time fixed by the Commission, or to make specific and full, true, and correct answer to any question within thirty days from the time it is lawfully required by the Commission so to do, shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto.

(d) In case of failure or refusal on the part of any carrier or lessor to accord to the Commission or its duly authorized special agents, accountants, or examiners, access to, and opportunity for the inspection and examination of, any lands, buildings, or equipment of said carrier or lessor, as provided in this section, such carrier or lessor shall forfeit to the United States the sum of one hundred dollars for each day during which such failure or refusal continues.

(e) All forfeitures authorized in this paragraph shall be recovered in the manner provided for the recovery of forfeitures under the provisions of this chapter.

(f) Any special agent, accountant, or examiner who knowingly and willfully divulges any fact or information which may come to his knowledge during the course of any examination or inspection made under authority of this section, except insofar as he may be directed by the Commission or by a court or judge thereof, shall be guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than $500 or imprisonment for not exceeding six months, or both.

(8) Definitions

As used in this section, the words "keep" and "kept" shall be construed to mean made, prepared, or compiled, as well as retained; the term "carrier" means a common carrier subject to this chapter, and includes a receiver or trustee of such carrier; the term "lessor" means a person owning a railroad, a water line, or a pipe line, leased to and operated by a common carrier subject to this chapter, and includes a receiver or trustee of such lessor; and the term "association" means an association or organization maintained by or in the interest of any group of carriers subject to this chapter which performs any service, or engages in any activities, in connection with any traffic, transportation, or facilities subject to this Act.

(9) Jurisdiction to compel compliance by mandamus

The district courts of the United States shall have jurisdiction, upon the application of the Attorney General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of said Act to regulate commerce or of any Act supplementary thereto or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of said Acts, or any of them.

(10) Special agents or examiners

And to carry out and give effect to the provisions of said Acts, or any of them, the Commission is authorized to employ special agents or examiners who shall have power to administer oaths, examine witnesses, and receive evidence.

(11) Liability of initial and delivering carrier for loss; limitation of liability; notice and filing of claim

Any common carrier, railroad, or transportation company subject to the provisions of this chapter receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory, or any common carrier, railroad, or transportation company delivering said property so received and transported shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it

or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is declared to be unlawful and void: *Provided*, That if the loss, damage, or injury occurs while the property is in the custody of a carrier by water the liability of such carrier shall be determined by the bill of lading of the carrier by water and by and under the laws and regulations applicable to transportation by water, and the liability of the initial or delivering carrier shall be the same as that of such carrier by water: *Provided, however*, That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary livestock, received for transportation concerning which the carrier shall have been or shall be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section 10 of this title; and any tariff schedule which may be filed with the Commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared and agreed upon; and the Commission is empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term "ordinary livestock" shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses: *Provided further*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law: *Provided further*, That all actions brought under and by virtue of this paragraph against the delivering carrier shall be brought, and may be maintained, if in a district court of the United States, only in a district, and if in a State court, only in a State through or into which the defendant carrier operates a line of railroad: *Provided further*, That it shall be unlawful for any such receiving or delivering common carrier to provide by rule, contract, regulation, or otherwise a shorter period for the filing of claims than nine months, and for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice: *And provided further*, That for the purposes of this paragraph and of paragraph (12) of this section the delivering carrier shall be construed to be the carrier performing the line-haul service nearest to the point of destination and not a carrier performing merely a switching service at the point of destination: *And provided further*, That the liability imposed by this paragraph shall also apply in the case of property reconsigned or diverted in accordance with the applicable tariffs filed as in this chapter provided.

(12) Recovery by initial or delivering carrier from connecting carrier

The common carrier, railroad, or transportation company issuing such receipt or bill of lading, or delivering such property so received and transported, shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained, the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action at law brought by the owners of such property.

(Feb. 4, 1887, ch. 104, pt. I, § 20, 24 Stat. 386; June 29, 1906, ch. 3591, § 7, 34 Stat. 593; Feb. 25, 1909, ch. 193, 35 Stat. 648; June 18, 1910, ch. 309, § 14, 36 Stat. 555; Mar. 4, 1915, ch. 176, § 1, 38 Stat. 1196; Aug. 9, 1916, ch. 301, 39 Stat. 441; Feb. 28, 1920, ch. 91, §§ 434–438, 41 Stat. 493, 494; July 3, 1926, ch. 761, 44 Stat. 835; Mar. 4, 1927, ch. 510, § 3, 44 Stat. 1448; Apr. 23, 1930, ch. 208, 46 Stat. 251; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Sept. 18, 1940, ch. 722, title I, § 13, 54 Stat. 916; June 3, 1948, ch. 386, 62 Stat. 295; Aug. 2, 1949, ch. 379, §§ 7–9, 63 Stat. 486; Feb. 5, 1976, Pub. L. 94–210, title III, § 307, 90 Stat. 55.)

REFERENCES IN TEXT

Section 5703 of title 5, referred to in par. (3)(d), was amended generally by Pub. L. 94–22, § 4, May 19, 1975, 89 Stat. 85, and as so amended does not contain a subsec. (b).

"This Act", referred to in pars. (5) and (8), "said Act to regulate commerce or of any Act supplementary thereto or amendatory thereof" and "said Acts", referred to in par. (9), and "said Acts", referred to in par. (10), mean act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 1 et seq.) and chapters 8, 12, 13, and 19 (§§ 301 et seq., 901 et seq. 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

CODIFICATION

Par. (1) was covered by parts of pars. (1) and (2) before amendment by act Sept. 18, 1940. Former par. (1) was incorporated in pars. (1) and (3) by the amendment.

Par. (2) was par. (2) in part before amendment by act Sept. 18, 1940. Former par. (2) was incorporated in pars. (1) and (2) by the amendment.

Par. (3) was par. (1) in part before amendment by act Sept. 18, 1940. Former par. (3) was incorporated in par. (7)(e) by the amendment.

Par. (4) was par. (5) in part before amendment by act Sept. 18, 1940. Former par. (4), relating to administration of oath, was omitted from section by the amendment.

Par. (5) was par. (5) in part before amendment by act Sept. 18, 1940. Former par. (5) was incorporated in pars. (4) and (5) by the amendment.

Par. (6) added by act Sept. 18, 1940. Former par. (6) was incorporated in par. (7)(a) by the amendment.

Par. (7) was covered by pars. (3) and (6) to (8) before amendment by act Sept. 18, 1940. Former par. (7) was incorporated in par. (7), subd. (b), by the amendment.

Par. (8) added by act Sept. 18, 1940. Former par. (8) was incorporated in par. (7)(f) by the amendment.

AMENDMENTS

1976—Par. (3). Pub. L. 94-210 substituted provisions authorizing the Commission to issue, not later than June 30, 1977, regulations and procedures prescribing a uniform cost and revenue accounting and reporting system for all common carriers by railroad subject to this chapter, and setting forth criteria, appropriations, etc., for such system, for provisions giving the Commission discretionary power to prescribe a uniform system of accounts applicable to any class of carriers subject to this chapter.

1949—Par. (1). Act Aug. 2, 1949, § 7, made par. (1) applicable to associations or organizations maintained by or in the interest of carriers subject to this chapter.

Par. (5). Act Aug. 2, 1949, § 8, included associations within its provisions.

Par. (8). Act Aug. 2, 1949, § 9, defined term "association".

1948—Par. (12). Act June 3, 1948, included recovery of any expense reasonably incurred by the carrier defending the suit in any action at law brought by the owners of the damaged or lost property.

1940—Par. (1). Act Sept. 18, 1940, § 13(a), required periodical or special reports in addition to annual reports, included lessors as well as carriers, authorized classifying carriers and lessors, and required report annually on affairs of carrier and lessor in such form and detail as prescribed by Commission.

Par. (2). Act Sept. 18, 1940, § 13(a), changed period for annual reports of required information and omitted provisions relating to forfeitures.

Par. (3). Act Sept. 18, 1940, § 13(a), authorized Commission to prescribe uniform system of accounts.

Par. (4). Act Sept. 18, 1940, § 13(a), provided for depreciation charges.

Par. (5). Act Sept. 18, 1940, § 13(a), applied to lessors as well as carriers and authorized Commission, special agents, accountants, or examiners to inspect and copy accounts, books, etc., and to inspect and examine lands, buildings, and equipment.

Par. (6). Act Sept. 18, 1940, § 13(a), provided for inspection and copying of accounts, books, etc., of persons furnishing cars or protection against elements, gave Commission authority to prescribe form of accounts, records, etc., and to have access to them through special agents, accountants, or examiners.

Par. (7). Act Sept. 18, 1940, § 13(a), provided for various penalties and forfeitures in connection with accounts, records, reports, etc.

Par. (8). Act Sept. 18, 1940, § 13(a), provided for definition of terms.

Par. (11). Act Sept. 18, 1940, § 13(b), proviso relating to liability of carrier by water, provided that such liability shall be determined by the bill of lading as well as under laws and regulations applicable to transportation by water.

1935—Act Aug. 9, 1935, substituted "this part", which has been translated as "this chapter" for "this Act", meaning act Feb. 4, 1887, known as the Interstate Commerce Act.

1930—Par. (11). Act Apr. 23, 1930, in proviso relating to time for notice and filing of claims, omitted provision for notice of claim and extended time for filing claim from four months to nine months, and omitted proviso fixing three-year limitation period for instituting suit for recovery of damages caused by carelessness of negligence to property in transit.

1927—Par. (11). Act Mar. 4, 1927, inserted proviso relating to venue of actions against delivering carrier, amended proviso relating to no notice required of claim, if loss due to negligence, etc. in transit, to provide a three year limitation for institution of suit, and inserted proviso construing delivering carrier.

Par. (12). Act Mar. 4, 1927, extended recovery of payments to delivering carriers.

1926—Par. (11). Act July 3, 1926, added proviso relating to liability for property reconsigned or diverted in accordance with applicable tariffs.

1920—Pars. (1) to (4). Act Feb. 28, 1920, § 434, numbered pars. (1) to (4) as "(1)" to "(4)", respectively.

Par. (5). Act Feb. 28, 1920, § 435, numbered par. (5) as "(5)", provided for depreciation charges and made applicable to accounts, etc., kept during period of Federal control by Act Feb. 28, 1920, § 435.

Pars. (6) to (10). Act Feb. 28, 1920, § 436, numbered pars. (6) to (10) as "(6)" to "(10)", respectively.

Par. (11). Act Feb. 28, 1920, §§ 436 to 438, proviso in par. (11) relating to liability of carrier by water and amended proviso relating to period for notice and filing of claims and institution of suits to provide that period of limitations be computed from time of disallowance of claim by carrier.

Par. (12). Act Feb. 28, 1920, § 436, numbered par. (12) as "(12)".

1916—Par. (11). Act Aug. 9, 1916, provided, in proviso relating to declared value of goods hidden from view, that ban on limitation of liability did not apply to passenger baggage or shipments of property if rates were based on declared values, authorized filing of tariff schedules establishing rates based on declared value, and defined "ordinary live stock".

1915—Par. (11). Act Mar. 4, 1915, made par. applicable to transportation of property between Territories and District of Columbia and from United States to adjacent foreign countries, inserted provision declaring any limitation of liability to be unlawful and void except as to goods on which a declared value has been stated in writing and as to which the Commission may establish rates dependent upon declared value, and added provisos relating to time for giving notice and filing of claims and institution of suits, and dispensing with necessity for notice and filing of claim where loss or injury was due to delay or damage in loading or unloading or damage in transit due to negligence.

1910—Par. (2). Act June 18, 1910, changed period for annual reports of statistics and authorized Commission to require periodical and special reports in addition to monthly reports.

1909—Par. (7). Act Feb. 25, 1909, added proviso authorizing Commission to permit destruction of old records.

1906—Pars. (1) and (2). Act June 29, 1906, amended pars. (1) and (2) generally.

Pars. (3) to (12). Act June 29, 1906, added pars. (3) to (12).

FEDERAL RULES OF CIVIL PROCEDURE

Application of, see rule 81, Title 28, Appendix, Judiciary and Judicial Procedure.

Effect of rule 81 on this section, see note by Advisory Committee under rule 81.

CROSS REFERENCES

Bills of lading, see section 81 et seq. of this title.

Control defined, see section 1 of this title.

Felony as offense punishable by imprisonment for term exceeding one year, see section 1 of Title 18, Crimes and Criminal Procedure.

Forfeitures, recovery of, see section 16 of this title.

Motor vehicle common carriers, application of pars. (11) and (12), see section 319 of this title.

Noncarrier deemed carrier upon acquiring control, see section 5 of this title.

Non-removable actions, see section 1445 of Title 28, Judiciary and Judicial Procedure.

Orders, writs and process under this section may run, be served, and be returnable anywhere in United States, see section 2321 of Title 28.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 5, 19a, 319, 1013, 1655 of this title; title 28 sections 1445, 2321, 2323.

§ 20a. Securities of carriers; issuance, etc.

(1) Carrier defined

As used in this section, the term "carrier" means a common carrier by railroad (except a street, suburban, or interurban electric railway which is not operated as a part of a general steam railroad system of transportation) which is subject to this chapter, or any corporation organized for the purpose of engaging in transportation by railroad subject to this chapter, or a sleeping-car company which is subject to this chapter.

(2) Issuance of securities; assumption of obligations; authorization

It shall be unlawful for any carrier to issue any share of capital stock or any bond or other evidence of interest in or indebtedness of the carrier (hereinafter in this section collectively termed "securities") or to assume any obligation or liability as lessor, lessee, guarantor, indorser, surety, or otherwise, in respect of the securities of any other person, natural or artificial, even though permitted by the authority creating the carrier corporation, unless and until, and then only to the extent that, upon application by the carrier, and after investigation by the Commission of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability in respect of the securities of any other person, natural or artificial, the Commission by order authorizes such issue or assumption. The Commission shall make such order only if it finds that such issue or assumption: (a) is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose: *Provided*, That nothing in this section is to be construed as applying to securities issued or obligations or liabilities assumed by the United States or any instrumentality thereof, or by the District of Columbia or any instrumentality thereof, or by any State of the United States, or by any political subdivision or municipal corporation of any State, or by any instrumentality of one or more States, political subdivisions thereof, or municipal corporations.

(3) Scope of Commission's authority

The Commission shall have power by its order to grant or deny the application as made, or to grant it in part and deny it in part, or to grant it with such modifications and upon such terms and conditions as the Commission may deem necessary or appropriate in the premises, and may from time to time, for good cause shown, make such supplemental orders in the premises as it may deem necessary or appropriate, and may by any such supplemental order modify the provisions of any previous order as to the particular purposes, uses, and extent to which, or the conditions under which, any securities so theretofore authorized or the proceeds thereof may be applied, subject always to the requirements of the paragraph (2) of this section.

(4) Form and contents of application; oath and signature

Every application for authority shall be made in such form and contain such matters as the Commission may prescribe. Every such application, as also every certificate of notification hereinafter provided for, shall be made under oath, signed and filed on behalf of the carrier by its president, a vice president, auditor, comptroller, or other executive officer having knowledge of the matters therein set forth and duly designated for that purpose by the carrier.

(5) Disposition of securities described in application, etc.

Whenever any securities set forth and described in any application for authority or certificate of notification as pledged or held unencumbered in the treasury of the carrier shall, subsequent to the filing of such application or certificate, be sold, pledged, repledged, or otherwise disposed of by the carrier, such carrier shall, within ten days after such sale, pledge, repledge, or other disposition, file with the Commission a certificate of notification to that effect, setting forth therein all such facts as may be required by the Commission.

(6) Notice of application to governors of States; intervention; hearings

Upon receipt of any such application for authority the Commission shall cause notice thereof to be given to and a copy filed with the governor of each State in which the applicant carrier operates. The railroad commissions, public service, or utilities commissions, or other appropriate State authorities of the State shall have the right to make before the Commission such representations as they may deem just and proper for preserving and conserving the rights and interests of their people and the States, respectively, involved in such proceedings. The Commission may hold hearings, if it sees fit, to enable it to determine its decision upon the application for authority.

(7) Jurisdiction of Commission as exclusive and plenary

The jurisdiction conferred upon the Commission by this section shall be exclusive and plenary, and a carrier may issue securities and assume obligations or liabilities in accordance with the provisions of this section without securing approval other than as specified herein.

(8) Guaranty of securities

Nothing herein shall be construed to imply any guaranty or obligation as to such securities on the part of the United States.

(9) Issue of short term notes; certificate of notification; proviso

The foregoing provisions of this section shall not apply to notes to be issued by the carrier

maturing not more than two years after the date thereof and aggregating (together with all other then outstanding notes of a maturity of two years or less) not more than 5 per centum of the par value of the securities of the carrier then outstanding. In the case of securities having no par value, the par value for the purposes of this paragraph shall be the fair market value as of the date of issue. Within ten days after the making of such notes the carrier issuing the same shall file with the Commission a certificate of notification, in such form as may from time to time be determined and prescribed by the Commission, setting forth as nearly as may be the same matters as those required in respect of applications for authority to issue other securities: *Provided*, That in any subsequent funding of such notes the provisions of this section respecting other securities shall apply.

(10) Reports by carriers as to securities or proceeds

The Commission shall require periodical or special reports from each carrier issuing any securities, including such notes, which shall show, in such detail as the Commission may require, the disposition made of such securities and the application of the proceeds thereof.

(11) Securities issued contrary to law void; effect; penalty

Any security issued or any obligation or liability assumed by a carrier, for which under the provisions of this section the authorization of the Commission is required, shall be void, if issued or assumed without such authorization therefor having first been obtained, or if issued or assumed contrary to any term or condition of such order of authorization as modified by any order supplemental thereto entered prior to such issuance or assumption; but no security issued or obligation or liability assumed in accordance with all the terms and conditions of such an order of authorization therefor as modified by any order supplemental thereto entered prior to such issuance or assumption, shall be rendered void because of failure to comply with any provision of this section relating to procedure and other matters preceding the entry of such order of authorization. If any security so made void or any security in respect to which the assumption of obligation or liability is so made void, is acquired by any person for value and in good faith and without notice that the issue or assumption is void, such person may in a suit or action in any court of competent jurisdiction hold jointly and severally liable for the full amount of the damage sustained by him in respect thereof, the carrier which issued the security so made void, or assumed the obligation or liability so made void, and its directors, officers, attorneys, and other agents, who participated in any way in the authorizing, issuing, hypothecating, or selling of the security so made void or in the authorizing of the assumption of the obligation or liability so made void. In case any security so made void was directly acquired from the carrier issuing it the holder may at his option rescind the transaction and upon the surrender of the security recover the consideration given therefor. Any director, officer, attorney, or agent of the carrier who knowingly assents to or concurs in any issue of securities or assumptions of obligation or liability forbidden by this section, or any sale or other disposition of securities contrary to the provisions of the Commission's order or orders in the premises, or any application not authorized by the Commission of the funds derived by the carrier through such sale or other disposition of such securities, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $1,000 nor more than $10,000, or by imprisonment for not less than one year nor more than three years, or by both such fine and imprisonment, in the discretion of the court.

(12) Restrictions on actions of officers and directors; penalty

It shall be unlawful for any person to hold the position of officer or director of more than one carrier, unless such holding shall have been authorized by order of the Commission, upon due showing, in form and manner prescribed by the Commission, that neither public nor private interests will be adversely affected thereby. It shall be unlawful for any officer or director of any carrier to receive for his own benefit, directly or indirectly, any money or thing of value in respect of the negotiation, hypothecation, or sale of any securities issued or to be issued by such carrier, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends of an operating carrier from any funds properly included in capital account. Any violation of these provisions shall be a misdemeanor, and on conviction in any United States court having jurisdiction shall be punished by a fine of not less than $1,000 nor more than $10,000, or by imprisonment for not less than one year nor more than three years, or by both such fine and imprisonment, in the discretion of the court.

(Feb. 4, 1887, ch. 104, pt. I, § 20a, as added Feb. 28, 1920, ch. 91, § 439, 41 Stat. 494, and amended Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Aug. 2, 1949, ch. 739, § 10, 63 Stat. 487; July 24, 1965, Pub. L. 89-86, § 1, 79 Stat. 263.)

CODIFICATION

In paragraphs (2) and (12), words "From and after one hundred and twenty days after this section takes effect [Feb. 28, 1920]", "After December 31, 1921," and "After this section takes effect [Feb. 28, 1920]", were omitted as executed.

AMENDMENTS

1965—Par. (2). Pub. L. 89-86 added proviso prohibiting construction of the section in a manner which would apply its provisions to securities issued or obligations or liabilities assumed by the United States or any instrumentality thereof, or by the District of Columbia, or any instrumentality thereof, or by any state, political subdivision or municipal corporation thereof, or by any instrumentality of one or more states, political subdivisions thereof, or municipal corporations.

1949—Par. (1). Act Aug. 2, 1949, included sleeping car companies within section.

1935—Act Aug. 9, 1935, substituted "this part", which has been translated as "this chapter", for "this Act", meaning act Feb. 4, 1887, known as the Interstate Commerce Act.

CROSS REFERENCES

Combinations and consolidations of carriers, see section 5 of this title.

Issue of securities under reorganization proceedings, see section 205 of Title 11, Bankruptcy.

Motor Carrier Act, application of this section to, see section 314 of this title.

Noncarrier deemed carrier upon acquiring control, see section 5 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5, 20b, 314 of this title; title 11 section 205; title 45 sections 791, 830.

§ 20b. Modification of railroad financial structures

(1) Approval and authorization of Commission; exclusion of equipment-trust securities

It shall be lawful (any express provision contained in any mortgage, indenture, deed of trust, corporate charter, stock certificate, or other instrument or any provision of State law to the contrary notwithstanding), with the approval and authorization of the Commission, as provided in paragraph (2) of this section, for a carrier as defined in section 20a(1) of this title to alter or modify (a) any provision of any class or classes of its securities as defined in section 20a(2) of this title being hereinafter in this section sometimes called "securities"; or (b) any provision of any mortgage, indenture, deed of trust, corporate charter, or other instrument pursuant to which any class of its securities shall have been issued or by which any class of its obligations is secured (hereinafter referred to as instruments): *Provided*, That the provisions of this section shall not apply to any equipment-trust certificates in respect of which a carrier is obligated, or to any evidences of indebtedness of a carrier the payment of which is secured in any manner solely by equipment, or to any instrument, whether an agreement, lease, conditional-sale agreement, or otherwise, pursuant to which such equipment-trust certificates or such evidences of indebtedness shall have been issued or by which they are secured.

(2) Application; public hearing; findings; submission of plan to security holders; order of Commission; force and effect

Whenever an alteration or modification is proposed under paragraph (1) of this section, the carrier seeking authority therefor shall, pursuant to such rules and regulations as the Commission shall prescribe, present an application to the Commission. Upon presentation of any such application, the Commission may, in its discretion, but need not, as a condition precedent to further consideration, require the applicant to secure assurances of assent to such alteration or modification by holders of such percentage of the aggregate principal amount or number of shares outstanding of the securities affected by such alternation or modification as the Commission shall in its discretion determine. If the Commission shall not require the applicant to secure any such assurances, or when such assurances, as the Commission may require shall have been secured, the Commission shall set such application for public hearing and the carrier shall give reasonable notice of such hearing in such manner, by mail, advertisement, or otherwise, as the Commission may find practicable and may direct, to holders of such of its classes of securities and to such other persons in interest as the Commission shall determine to be appropriate and shall direct. If the Commission, after hearing, in addition to making (in any case where such alteration or modification involves an issuance of securities) the findings required by paragraph (2) of section 20a of this title, not inconsistent with paragraph (1) of this section shall find that, subject to such terms and conditions and with such amendments as it shall determine to be just and reasonable, the proposed alteration or modification—

(a) is within the scope of paragraph (1) of this section:

(b) will be in the public interest;

(c) will be in the best interests of the carrier, of each class of its stockholders, and of the holders of each class of its obligations affected by such modification or alteration; and

(d) will not be adverse to the interests of any creditor of the carrier not affected by such modification or alteration,

then (unless the applicant, carrier shall withdraw its application) the Commission shall cause the carrier, in such manner as it shall direct, to submit the proposed alteration or modification (with such terms, conditions, and amendments, if any) to the holders of each class of its securities affected thereby, for acceptance or rejection. The Commission shall have the power to make such general rules and regulations and such special requirements in any particular case in respect to the solicitation of assents, opposition, assurances of assent, acceptance, approval, or disapproval of such holders (whether such solicitation is made before or after approval of the proposed alteration or modification by the Commission), as it shall deem necessary or desirable; and no solicitation shall be made, and no letter, circular, advertisement, or other communication, or financial or statistical statement, or summary thereof, shall be used in any such solicitation, in contravention of such rules, regulations, or special requirements. The Commission may direct that the assents (and any revocations thereof) of such holders to the proposed alteration or modification shall be addressed to a bank or trust company, approved by it, which is incorporated under the laws of the United States or any State thereof, and which has a capital and surplus of at least $2,000,000, and is a member of the Federal Reserve System. Any bank or trust company so approved shall certify to the Commission the result of such submission and the Commission may, in its discretion, rely upon such certification as conclusive evidence in determining the result of such submission. If the Commission shall find that as a result of such submission the proposed alteration or modification has been assented to by the holders of at least 75 per centum of the aggregate principal amount or number of shares outstanding of each class of securities affected thereby (or as to any class (i) where 75 per centum thereof is held by fewer than twenty-five holders, or (ii) which is entitled to vote for the election of directors of the carrier and the assents of the holders of 25 per centum or more thereof are determined by the Commission to be within the control of the carrier or of any person or persons controlling the carrier, such larger percentage, if any, as the Commission may determine to be just and reasonable and in

the public interest), the Commission shall enter an order approving and authorizing the proposed alteration or modification upon the terms and conditions and with the amendments, if any, so determined to be just and reasonable. Such order shall make provision as to the time when such alteration or modification shall become and be binding, which may be upon publication of a declaration to that effect by the carrier, or otherwise, as the Commission may determine. Any alteration or modification which shall become and be binding pursuant to the approval and authority of the Commission hereunder shall be binding upon each holder of any security of the carrier of each class affected by such alteration or modification, and upon any trustee or other party to any instrument under which any class of obligations shall have been issued or by which it is secured, and when any alteration or modification shall become and be binding the rights of each such holder and of any such trustee or other party shall be correspondingly altered or modified.

(3) When class of securities affected; what constitutes outstanding securities; assent to modification

For the purposes of this section a class of securities shall be deemed to be affected by any modification or alteration proposed only (a) if a modification or alteration is proposed as to any provision of such class of securities, or (b) if any modification or alteration is proposed as to any provision of any instrument pursuant to which such class of securities shall have been issued or shall be secured: *Provided*, That in any case where more than one class of securities shall have been issued and be outstanding or shall be secured pursuant to any instrument, any alteration or modification proposed as to any provision of such instrument which does not relate to all of the classes of securities issued thereunder, shall be deemed to affect only the class or classes of securities to which such alteration or modification is related. For the purpose of the finding of the Commission referred to in paragraph (2) of this section as to whether the required percentage of the aggregate principal amount or number of shares outstanding of each class of securities affected by any proposed alteration or modification has assented to the making of such alteration or modification, any security which secures any evidence or evidences of indebtedness of the carrier or of any company controlling or controlled by the carrier shall be deemed to be outstanding unless the Commission in its discretion determines that the proposed alteration or modification does not materially affect the interests of the holder or holders of the evidence or evidences of indebtedness secured by such security. Whenever any such pledged security is, for said purposes, to be deemed outstanding, assent in respect of such security, as to any proposed alteration or modification, may be given only (any express or implied provision in any mortgage, indenture, deed of trust, note, or other instrument to the contrary notwithstanding) as follows: (a) Where such security is pledged as security under a mortgage, indenture, deed of trust, or other instrument, pursuant to which any evidences of indebtedness are issued and outstanding, by the holders of a majority in principal amount of such evidences of indebtedness, or (b) where such security secures an evidence or evidences of indebtedness not issued pursuant to such a mortgage, indenture, deed of trust, or other instrument, by the holder or holders of such evidence or evidences of indebtedness; and in any such case the Commission, in addition to the submission referred to in paragraph (2) of this section, shall cause the carrier in such manner as it shall direct to submit the proposed alteration or modification (with such terms, conditions, and amendments, if any, as the Commission shall have determined to be just and reasonable) for acceptance or rejection, to the holders of the evidences of indebtedness issued and outstanding pursuant to such mortgage, indenture, deed of trust, or other instrument, or to the holder or holders of such evidence or evidences of indebtedness not so issued, and such proposed alteration or modification need not be submitted to the trustee of any such mortgage, indenture, deed of trust, or other instrument, but assent in respect of any such security shall be determined as hereinbefore in this section provided. For the purposes of this section a security (other than a security entitled to vote for the election of directors of the carrier) or an evidence of indebtedness shall not be deemed to be outstanding if, in the determination of the Commission, the assent of the holder thereof to any proposed alteration or modification is within the control of the carrier or of any person or persons controlling the carrier. The Commission shall, for the purposes of this section, divide the securities to be affected by any proposed alteration or modification into such classes as it shall determine to be just and reasonable.

(4) Modification of securities of carrier acting as guarantor, endorser, surety, or otherwise; person deemed carrier

(a) Any authorization and approval hereunder of any alteration or modification of a provision of any class of securities of a carrier or of a provision of any instrument pursuant to which a class of securities has been issued, or by which it is secured, shall be deemed to constitute authorization and approval of a corresponding alteration or modification of the obligation of any other carrier which has assumed liability in respect of such class of securities as guarantor, endorser, surety, or otherwise: *Provided*, That such other carrier consents in writing to such alteration or modification of such class of securities in respect of which it has assumed liability or of the instrument pursuant to which such class of securities has been issued or by which it is secured and, such consent having been given, any such corresponding alteration or modification shall become effective, without other action, when the alteration or modification of such class of securities or of such instrument shall become and be binding.

(b) Any person who is liable or obligated contingently or otherwise on any class or classes of securities issued by a carrier shall, with respect to such class or classes of securities, for the purposes of this section, be deemed a carrier.

(5) Authority of section as exclusive and plenary

The authority conferred by this section shall be exclusive and plenary and any carrier, in respect of any alteration or modification author-

ized and approved by the Commission hereunder, shall have full power to make any such alteration or modification and to take any actions incidental or appropriate thereto, and may make any such alteration or modification and take any such actions, and any such alteration or modification may be made without securing the approval of the Commission under any other section of this Act or other paragraph of this section, and without securing approval of any State authority, and any carrier and its officers and employees and any other persons, participating in the making of an alteration or modification approved and authorized under the provisions of this section or the taking of any such actions, shall be, and they are, relieved from the operation of all restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to make and carry into effect the alteration or modification so approved and authorized in accordance with the conditions and with the amendments, if any, imposed by the Commission. Any power granted by this section to any carrier shall be deemed to be in addition to and in modification of its powers under its corporate charter or under the laws of any State. The provisions of this section shall not affect in any way the negotiability of any security of any carrier or of the obligation of any carrier which has assumed liability in respect thereto.

(6) Reports to Commission from carrier

The Commission shall require periodical or special reports from each carrier which shall hereafter secure from the Commission approval and authorization of any alteration or modification under this section, which shall show, in such detail as the Commission may require, the action taken by the carrier in the making of such alteration or modification.

(7) Section as permissive

The provisions of this section are permissive and not mandatory and shall not require any carrier to obtain authorization and approval of the Commission hereunder for the making of any alteration or modification of any provision of any of its securities or of any class thereof or of any provision of any mortgage, indenture, deed of trust, corporate charter, or other instrument, which it may be able lawfully to make in any other manner, whether by reason of provisions for the making of such alteration or modification in any such mortgage, indenture, deed of trust, corporate charter, or other instrument, or otherwise: *Provided*, That the provisions of paragraph (2) of section 20a of this title, if applicable to such alteration or modification made otherwise than pursuant to the provisions of this section, shall continue to be so applicable.

(8) Law governing applications; supplemental orders

The provisions of paragraph (6) of section 20a of this title, except the provisions of paragraph (6) of said section in respect of hearings, shall apply to applications made under this section. In connection with any order entered by the Commission pursuant to paragraph (2) of this section, the Commission may from time to time, for good cause shown, make such supplemental orders in the premises as it may deem necessary or appropriate, and may by any such supplemental order modify the provisions of any such order, subject always to the requirements of paragraph (2) of this section.

(9) Solicitation of proxies

The provisions of subsection (a) of section 78n of title 15 shall not apply to any solicitation in connection with a proposed alteration or modification pursuant to this section.

(10) Rules and regulations

The Commission shall have the power to make such rules and regulations appropriate to its administration of the provisions of this section as it shall deem necessary or desirable.

(11) Issuance of securities; law governing

Any issuance of securities under this section which shall be found by the Commission to comply with the requirements of paragraph (2) of section 20a of this title shall be deemed to be an issuance which is subject to the provisions of section 20a of this title within the meaning of section 3(a)(6) of the Securities Act of 1933, as amended [15 U.S.C. 77c(a)(6)]. Section 5 of said Securities Act [15 U.S.C. 77e] shall not apply to the issuance, sale, or exchange of certificates of deposit representing securities of, or claims against, any carrier which are issued by committees in proceedings under this section, and said certificates of deposit and transactions therein shall, for the purposes of said Securities Act [15 U.S.C. 77a et seq.] be deemed to be added to those exempted by sections 3 and 4, respectively, of said Securities Act [15 U.S.C. 77c, 77d].

(12) Taxes on issuance, transfer, or exchange of securities

The provisions of sections 1801, 1802, 3481, and 3482 of the Internal Revenue Code and any amendments thereto, unless specifically providing to the contrary, shall not apply to the issuance, transfer, or exchange of securities or the making or delivery of conveyances to make effective any alteration or modification effected pursuant to this section.

(13) Conditions permitting modification and adjustment procedure to carriers in receivership or reorganization proceedings

The Commission shall not approve an application filed under this section by any carrier while in equity receivership or in process of reorganization under section 205 of title 11, except that the Commission may approve an application filed by a carrier which, on April 9, 1948, is in equity receivership and with respect to which no order confirming the sale of the carrier's property has been entered, or is in process of reorganization under section 205 of title 11 and with respect to which no order confirming a plan shall have been entered, or, such an order having been entered, if an appeal from said order is pending on said date in a court of appeals or the matter is pending in the Supreme Court on a petition to review any order of a court of appeals dealing with said order of confirmation or the time within which to make such appeal or to file such petition has not expired, if prior to the filing of such application with the Commission such carrier shall have applied for and been granted permission to file such application by the district judge before

whom the equity receivership or section 205 of title 11 proceeding is pending. Any such carrier applying for permission to file such application shall file with the court as a prerequisite to the granting of such permission (1) a copy of the proposed application, (2) a copy of the proposed plan of alteration or modification of its securities, and (3) assurances satisfactory to the court of the acceptance of such plan from holders of at least 25 per centum of the aggregate amount of all securities, including not less than 25 per centum of the aggregate amount of all creditors' claims, affected by such plan. An order of a district judge granting or withholding such permission shall be final and shall not be subject to review. Upon granting of such permission, such proceeding, so far as it relates to a plan of reorganization, shall be suspended until the Commission shall have notified the court that (a) the application filed by such carrier under this section has been dismissed or denied by the Commission or withdrawn, (b) the Commission has approved and authorized an alteration or modification under this section with respect to the securities of such carrier, or (c) twelve months have elapsed since the filing of such application and no such alteration or modification has been approved and authorized by the Commission. Upon receipt by the court of notification that such application has been dismissed or denied or withdrawn or that twelve months have elapsed and no alteration or modification has been approved and authorized, the equity receivership or section 205 of title 11 proceeding shall be resumed as though permission to file application under this section had not been granted. Upon receipt by the court of notification that the Commission has authorized and approved such alteration or modification of the carrier's securities under this section as, in the judgment of the court, makes further receivership or section 205 of title 11 proceeding unnecessary, the court shall enter an order restoring custody of the property to the debtor, and making such other provision as may be necessary to terminate the equity receivership or section 205 of title 11 proceeding.

(Feb. 4, 1887, ch. 104, pt. I, § 20b, as added Apr. 9, 1948, ch. 180, § 2, 62 Stat. 163, and amended June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Aug. 16, 1957, Pub. L. 85-150, §§ 1, 2, 71 Stat. 369.)

References in Text

Said Securities Act, referred to in par. (11), means the Securities Act of 1933, act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables volume.

Sections 1801, 1802, 3481, and 3482 of the Internal Revenue Code, referred to in par. (12), meaning the I.R.C. of 1939, were classified to sections 1801, 1802, 3481, and 3482 of former Title 26, Internal Revenue Code, and were repealed by section 7851(a)(4) of the Internal Revenue Code of 1954. For table of comparisons of the 1939 Code to the 1954 Code, see Table I preceding section 1 of Title 26. See, also, section 7852(b) of Title 26 for provision that references in other laws to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1954 Code, which is then applicable.

Amendments

1957—Par. (2). Pub. L. 85-150, § 1, empowered Commission to make rules, regulations, and special requirements as to solicitation made both before and after approval of proposed alteration or modification, directed addressing of assents and revocations to an approved bank or trust company for certification, and prescribed percentages in excess of the 75 percent requisite for approval of proposals if it determines that the assents of the holders of 25 percent or more of the securities of any class entitled to vote for directors are subject to control by the carrier.

Par. (3). Pub. L. 85-150, § 2, inserted "(other than a security entitled to vote for the election of directors of the carrier)" and added "The Commission shall, for the purposes of this section, divided the securities to be affected by any proposed alteration or modification into such classes as it shall determine to be just and reasonable.".

Change of Name

"Court of Appeals" was substituted in par. (13) for "circuit court of appeals" on authority of act June 25, 1948, as amended by act May 24, 1949.

Effective Date of 1957 Amendment

Section 3 of Pub. L. 85-150 provided that: "The amendments made by this Act [to pars. (2) and (3) of this section] shall take effect on the first day of the fourth month following the month in which this Act is enacted [Aug. 16, 1957]."

Separability of Provisions

Section 4 of act Apr. 9, 1948, provided that: "If any provision of this Act [enacting this section and section 208 of Title 11, Bankruptcy], or the application thereof to any person or circumstances, is held invalid, the remainder of this Act [this section and section 208 of title 11], and the application of such provision to other persons or circumstances, shall not be affected thereby."

Congressional Declaration of Purpose of Act Apr. 9, 1948

Section 1 of act Apr. 9, 1948, provided: "That it is hereby declared to be in aid of the national transportation policy of the Congress, as set forth in the preamble of the Interstate Commerce Act, as amended [chapters 1, 8, 12, 13, and 19 of this title], in order to promote the public interest in avoiding the deterioration of service and the interruption of employment which inevitably attend the threat of financial difficulties and which follow upon financial collapse and in order to promote the public interest in increased stability of values of railroad securities with resulting greater confidence therein of investors, to assure, insofar as possible, continuity of sound financial condition of common carriers subject to part I of said Act [this chapter], to enhance the marketability of railroad securities impaired by large and continuing accumulations of interest on income bonds and dividends on preferred stock and to enable said common carriers, insofar as possible, to avoid prospective financial difficulties, inability to meet debts as they mature, and insolvency. To assist in accomplishing these ends and because certain classes of the securities of such carriers are in the usual case held by a very large number of holders, and, further, to enable modification and reformation of provisions of the aforesaid classes of securities and of provisions of the instruments pursuant to which they are issued or by which they are secured in cases where such modification and reformation shall have become necessary or desirable in the public interest in order to avoid obstruction to or interference with the economical, efficient, and orderly conduct by such carriers of their affairs, it is deemed necessary to provide means, in the manner and with the safeguards

herein provided, for the alteration and modification, without the assent of every holder thereof, of the provisions of such classes of securities and of the instruments pursuant to which they are outstanding or by which they are secured."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 354.

§ 20c. Recordation of railroad equipment trust agreements and other evidences of equipment indebtedness

Any mortgage, lease, equipment trust agreement, conditional sale agreement, or other instrument evidencing the mortgage, lease, conditional sale, or bailment of railroad cars, locomotives, or other rolling stock, used or intended for use in connection with interstate commerce, or any assignment of rights or interest under any such instrument, or any supplement or amendment to any such instrument or assignment (including any release, discharge or satisfaction thereof, in whole or in part), may be filed with the Commission, provided such instrument, assignment, supplement or amendment is in writing, executed by the parties thereto, and acknowledged or verified in accordance with such requirements as the Commission shall prescribe; and any such instrument or other document, when so filed with the Commission, shall constitute notice to and shall be valid and enforceable against all persons including, without limitation, any purchaser from, or mortgagee, creditor, receiver, or trustee in bankruptcy of, the mortgagor, buyer, lessee or bailee of the equipment covered thereby, from and after the time such instrument or other document is so filed with the Commission; and such instrument or other document need not be otherwise filed, deposited, registered or recorded under the provisions of any other law of the United States of America, or of any State (or political subdivision thereof), territory, district or possession thereof, respecting the filing, deposit, registration or recordation of such instruments or documents. The Commission shall establish and maintain a system for the recordation of each such instrument or document, filed pursuant to the provisions of this section, and shall cause to be marked or stamped thereon, a consecutive number, as well as the date and hour of such recordation, and shall maintain, open to public inspection, an index of all such instruments or documents, including any assignment, amendment, release, discharge or satisfaction thereof, and shall record, in such index the names and addresses of the principal debtors, trustees, guarantors and other parties thereto, as well as such other facts as may be necessary to facilitate the determination of the rights of the parties to such transactions.

(Feb. 4, 1887, ch. 104, pt. I, § 20c, as added July 16, 1952, ch. 881, 66 Stat. 724.)

§ 21. Annual reports of Commission

The Commission shall, on or before the 3d day of April of each year, make a report which shall be transmitted to Congress and copies of which shall be distributed as are the other reports transmitted to Congress. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary; and the names and compensation of the persons employed by said Commission.

(Feb. 4, 1887, ch. 104, pt. I, § 21, 24 Stat. 387; Mar. 2, 1889, ch. 382, § 8, 25 Stat. 862; May 23, 1935, ch. 136, 49 Stat. 287; Apr. 21, 1976, Pub. L. 94-273, § 11(4), 90 Stat. 378.)

AMENDMENTS

1976—Pub. L. 94-273 substituted "April" for "January".

1935—Act May 23, 1935, changed date for annual report from Dec. 1, to Jan. 3.

1889—Act Mar. 2, 1889, provided for direct report by Commission to Congress instead of to Secretary of the Interior and transmission by him to Congress and added provision that report contain information regarding names and compensation of employees.

CROSS REFERENCES

Printing and distribution of Commission reports, see section 1323 of Title 44, Public Printing and Documents.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5c of this title.

§ 22. Restrictions; quotations of rates for United States Government

(1) Nothing in this chapter shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the transportation of persons for the United States Government free or at reduced rates, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this chapter shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of Veterans' Administration facilities or State Homes for Disabled Volunteer Soldiers and of Soldiers' and Sailors' Orphan Homes, including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes; nothing in this chapter shall be construed to prohibit any common carrier from establishing by publication and filing in the manner prescribed in section 6 of this title reduced fares for application to the transportation of (a) personnel of United States armed services or of foreign armed services, when such persons are traveling at their own expense, in uniform of those services, and while on official leave, furlough, or pass; or (b) persons discharged, retired, or released from United States armed services within thirty days prior to the commencement of such transportation and traveling at their own expense to their homes or other prospective places of abode; nothing in this chapter shall be construed to prevent railroads from

giving free carriage to their own officers and employees, or to prevent the free carriage, storage, or handling by a carrier of the household goods and other personal effects of its own officers or employees when such goods and effects must necessarily be moved from one place to another as a result of a change in the place of employment of such officers or employees while in the service of the carrier, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this chapter contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies; nothing in this chapter shall be construed to prohibit any common carrier from carrying any totally blind person accompanied by a guide or seeing-eye dog or other guide dog specially trained and educated for that purpose or from carrying a disabled person accompanied by an attendant if such person is disabled to the extent of requiring such attendant, at the usual and ordinary fare charged to one person, under such reasonable regulations as may have been established by the carrier: *Provided*, That no pending litigation shall in any way be affected by this chapter: *Provided further*, That nothing in this chapter shall prevent the issuance of joint interchangeable five-thousand-mile tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand or more miles. But before any common carrier, subject to the provisions of this chapter, shall issue any such joint interchangeable mileage tickets with special privileges, as aforesaid, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, together with specifications of the amount of free baggage permitted to be carried under such tickets, in the same manner as common carriers are required to do with regard to other joint rates by section 6 of this title; and all the provisions of said section relating to joint rates, fares, and charges shall be observed by said common carriers and enforced by the Interstate Commerce Commission as fully with regard to such joint interchangeable mileage tickets as with regard to other joint rates, fares, and charges referred to in said section. It shall be unlawful for any common carrier that has issued or authorized to be issued any such joint interchangeable mileage tickets to demand, collect, or receive from any person or persons a greater or less compensation for transportation of persons or baggage under such joint interchangeable mileage tickets than that required by the rate, fare, or charge specified in the copies of the joint tariff of rates, fares, or charges filed with the Commission in force at the time. The provisions of section 10 of this title shall apply to any violation of the requirements of this proviso. Nothing in this chapter shall prevent any carrier or carriers subject to this chapter from giving reduced rates for the transportation of property to or from any section of the country with the object of providing relief in case of earthquake, flood, fire, famine, drought, epidemic, pestilence, or other calamitous visitation or disaster, if such reduced rates have first been authorized by order of the Commission (with or without a hearing); but in any such order the Commission shall (1) define such section, (2) specify the period during which such reduced rates are to remain in effect, and (3) clearly define the class or classes of persons entitled to such reduced rates: *Provided*, That any such order may define the class or classes entitled to such reduced rates as being persons designated as being in distress and in need of relief by agents of the United States or any State authorized to assist in relieving the distress caused by any such calamitous visitation or disaster. No carrier subject to the provisions of this chapter shall be deemed to have violated the provisions of such chapter with respect to undue or unreasonable preference or unjust discrimination by reason of the fact that such carrier extends such reduced rates only to the class or classes of persons defined in the order of the Commission authorizing such reduced rates.

(2) All quotations or tenders of rates, fares or charges under paragraph (1) of this section for the transportation, storage, or handling of property or the transportation of persons free or at reduced rates for the United States Government, or any agency or department thereof, including quotations or tenders for retroactive application whether negotiated or renegotiated after the services have been performed, shall be in writing or confirmed in writing and a copy or copies thereof shall be submitted to the Commission by the carrier or carriers offering such tenders or quotations in the manner specified by the Commission and only upon the submittal of such a quotation or tender made pursuant to an agreement approved by the Commission under section 5b or section 5c of this title shall the provisions of paragraph (9) of such section 5b or paragraph (8) of such section 5c apply, but said provisions shall continue to apply as to any agreement so approved by the Commission under which any such quotation or tender (a) was made prior to August 31, 1957 or (b) is on or after August 31, 1957 made and for security reasons, as hereinafter provided, is not submitted to the Commission: *Provided*, That nothing in this paragraph shall affect any liability or cause of action which may have accrued prior to August 31, 1957. Submittal of such quotations or tenders to the Commission shall be made concurrently with submittal to the United States Government, or any agency or department thereof, for whose account the quotations or tenders are offered or for whom the proposed services are to be rendered. Such quotations or tenders shall be preserved by the Commission for public inspection. The provisions of this paragraph requiring submissions to the Commission shall not apply to any quotation or tender which, as indicated by the United States Government, or any agency or department thereof, to any carrier or carriers, involves information the disclosure of which would endanger the national security.

(Feb. 4, 1887, ch. 104, pt. I, § 22, 24 Stat. 387; Mar. 2, 1889, ch. 382, § 9, 25 Stat. 862; Feb. 8, 1895, ch. 61, 28 Stat. 643; Aug. 18, 1922, ch. 280, 42 Stat. 827; Feb. 26, 1927, ch. 217, 44 Stat.

1247; Mar. 4, 1927, ch. 510, § 1, 44 Stat. 1446; June 27, 1934, ch. 847, title V, § 511, 48 Stat. 1264; Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; July 5, 1937, ch. 432, 50 Stat. 475; Aug. 25, 1937, ch. 776, 50 Stat. 809; Sept. 18, 1940, ch. 722, title I, § 3(c)-(e), 54 Stat. 900; Sept. 27, 1944, ch. 423, 58 Stat. 751; July 27, 1956, ch. 759, 70 Stat. 702; Aug. 31, 1957, Pub. L. 85-246, 71 Stat. 564; Sept. 2, 1958, Pub. L. 85-857, § 13(a), 72 Stat. 1264; Oct. 19, 1976, Pub. L. 94-555, title II, § 220(n), 90 Stat. 2630.)

AMENDMENTS

1976—Par. (2). Pub. L. 94-555 substituted "or section 5c" following "under section 5b" and "such section 5b or paragraph (8) of such section 5c" for "said section 5b" following "paragraph (9) of".

1958—Pub. L. 85-857 substituted "inmates of Veterans' Administration facilities or State Homes" for "inmates of the National Homes or State Homes", in par. (1).

1957—Pub. L. 85-246 designated existing provisions as par. (1) and added par. (2).

1956—Act July 27, 1956, inserted after "or other guide dog specially trained and educated for that purpose" a comma and the words "or from carrying a disabled person accompanied by an attendant if such person is disabled to the extent of requiring such attendant,".

1944—Act Sept. 27, 1944, inserted provision authorizing establishment of reduced fares for transportation of personnel of armed services while on leave, furlough, or pass, or when returning to their homes after discharge, retirement, or release.

1940—Act Sept. 18, 1940, inserted provisions authorizing transportation of Government employees at free or reduced rates and for free carriage, storage, or handling of household and personal effects of officers and employees of carrier who may be transferred to new places of employment, repealed provision relating to reduced rates for transporting commodities to improve housing conditions, struck out (1) at beginning of section, and repealed pars. (2) and (3), relating to issuance of interchangeable mileage tickets.

1937—Act Aug. 25, 1937, provided in provision of par. (1), relating to reduced transportation charges in case of earthquake, flood, etc., that order of Commission authorizing such reduced rates shall also define and specify the classes of persons entitled thereto.

Act July 5, 1937, inserted provision in par. (1) authorizing blind persons to be accompanied by guide dogs.

1934—Act June 27, 1934, added provision authorizing carriers to give reduced rates for transportation of commodities specified by Commission.

1927—Act Mar. 4, 1927, added provision to par. (1) authorizing reduced rates for transporting property for relief in case of earthquake, flood, etc.

Act Feb. 26, 1927, inserted provision in par. (1) authorizing the carrying of blind person and guide on one fare.

1922—Act Aug. 18, 1922, designated section as par. (1) and added pars. (2) and (3), requiring issuance of interchangeable mileage or scrip coupon tickets, providing for discretionary exemption from such issuance, prescribing the making of rules and regulations governing the issuance and use of such tickets, and providing penalty for refusal to issue or accept such tickets.

1895—Act Feb. 8, 1895, added proviso authorizing issuance of joint interchangeable mileage tickets and requiring filing of joint tariffs of rates, fares, or charges on which such tickets are based.

1889—Act Mar. 2, 1889, inserted provisions authorizing free carriage of destitute and homeless persons transported by charitable societies and reduced rates to municipal governments for transportation of indigent persons or inmates of homes for disabled soldiers and sailors.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-555 effective on October 1, 1976, see section 303 of Pub. L. 94-555, set out as an Effective Date of 1976 Amendment note under section 543 of Title 45, Railroads.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-857 effective Jan. 1, 1959, see section 2 of Pub. L. 85-857, set out as an Effective Date note preceding Part I of Title 38, Veterans' Benefits.

CROSS REFERENCES

Free transportation for passengers, see section 1 of this title.

Motor vehicle common carriers, application to, see section 317 of this title.

Rates on Government traffic, see section 65 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 65, 66, 317, 906 of this title; title 45 section 546.

§ 23. Mandamus to obtain equal facilities for shippers

The district courts of the United States shall have jurisdiction upon the relation of any person or persons, firm, or corporation, alleging such violation by a common carrier, of any of the provisions of the act to which this is a supplement and all acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ: *Provided*, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper, pending the determination of the question of fact: *Provided*, That the remedy given by writ of mandamus shall be cumulative, and shall not be held to exclude or interfere with other remedies provided by this act or the act to which it is a supplement.

(Feb. 4, 1887, ch. 104, pt. I, § 23, formerly Mar. 2, 1889, ch. 382, § 10, 25 Stat. 862; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167, renumbered May 16, 1942, ch. 318, § 5, 56 Stat. 301.)

REFERENCES IN TEXT

"This act or the act to which it is a supplement" referred to in text, means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 1 et seq.) and chapters 8, 12, 13, and 19 (§§ 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

CODIFICATION

Section is from section 10 of act Mar. 2, 1889, which was renumbered section 23 of the Interstate Commerce Act of Feb. 4, 1887, by act May 16, 1942.

Section was formerly classified to section 49 of this title.

PRIOR PROVISIONS

A prior section 23 was contained in the Interstate Commerce Act as originally enacted by act Feb. 4, 1887. Such section appropriated funds for the fiscal year ending June 30, 1888.

CHANGE OF NAME

"District court" was substituted for "circuit court" to conform to act Mar. 3, 1911, which transferred the powers and duties of the circuit courts to the district courts.

FEDERAL RULES OF CIVIL PROCEDURE

Abolition of writ of mandamus and obtaining of similar relief by appropriate action or motion, see rule 81 of Title 28, Appendix, Judiciary and Judicial Procedure.

CROSS REFERENCES

Orders, writs and process under this section may run, be served, and be returnable anywhere in United States, see section 2321 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 28 sections 2321, 2323.

§ 25. Repealed. Sept. 18, 1940, ch. 722, title I, § 14(a), 54 Stat. 919

Section, act Feb. 4, 1887, ch. 104, pt. I, § 25, as added by act Feb. 28, 1920, ch. 91, § 441, 41 Stat. 497, and amended Apr. 16, 1936, ch. 229, § 10, 49 Stat. 1212, related to schedules and rates of water carriers in foreign commerce and is now covered by section 901 et seq. of this title.

§ 26. Safety appliances, methods, and systems

(a) Definition of carrier

The term "carrier" as used in this section includes any carrier by railroad subject to this chapter (including any terminal or station company), and any receiver or any other individual or body, judicial or otherwise, when in the possession of the business of a carrier subject to this section: *Provided, however,* That the term "carrier" shall not include any street, interurban, or suburban electric railway unless such railway is operated as a part of a general steam-railroad system of transportation, but shall not exclude any part of a general steam-railroad system of transportation now or hereafter operated by any other motive power.

(b) Order to install systems, etc.; modification; negligence of carrier

The Secretary of Transportation may, after investigation, if found necessary in the public interest, order any carrier within a time specified in the order, to install the block signal system, interlocking, automatic train stop, train control, and/or cab-signal devices, and/or other similar appliances, methods, and systems intended to promote the safety of railroad operation, which comply with specifications and requirements prescribed by the Secretary, upon the whole or any part of its railroad such order to be issued and published a reasonable time (as determined by the Secretary) in advance of the date for its fulfillment: *Provided,* That block signal systems, interlocking, automatic train stop, train control, and cab-signal devices in use on August 26, 1937, or such systems or devices hereinafter installed may not be discontinued or materially modified by carriers without the approval of the Secretary: *Provided further,* That a carrier shall not be held to be negligent because of its failure to install such systems, devices, appliances, or methods upon a portion of its railroad not included in the order, and any action arising because of an accident occurring upon such portion of its railroad shall be determined without consideration of the use of such systems, devices, appliances, or methods upon another portion of its railroad.

(c) Filing report on rules, standards, and instructions; time; modification

Each carrier by railroad shall file with the Commission its rules, standards, and instructions for the installation, inspection, maintenance, and repair of the systems, devices, and appliances covered by this section within six months after August 26, 1937, and, after approval by the Commission, such rules, standards, and instructions, with such modifications as the Commission may require, shall become obligatory upon the carrier: *Provided, however,* That if any such carrier shall fail to file its rules, standards, and instructions the Commission shall prepare rules, standards, and instructions for the installation, inspection, maintenance, and repair of such systems, devices, and appliances to be observed by such carrier, which rules, standards, and instructions, a copy thereof having been served on the president, chief operating officer, trustee, or receiver, of such carrier, shall be obligatory: *Provided further,* That such carrier may from time to time change the rules, standards, and instructions herein provided for, but such change shall not take effect and the new rules, standards, and instructions be enforced until they shall have been filed with and approved by the Secretary of Transportation: *And provided further,* That the Secretary may on his own motion, upon good cause shown, revise, amend, or modify the rules, standards, and instructions prescribed by him under this subsection, and as revised, amended, or modified they shall be obligatory upon the carrier after a copy thereof shall have been served as above provided.

(d) Inspection by Secretary of Transportation; personnel

The Secretary of Transportation is authorized to inspect and test any systems, devices, and appliances referred to in this section used by any such carrier and to determine whether such systems, devices, and appliances are in proper condition to operate and provide adequate safety. For these purposes the Secretary is authorized to employ persons familiar with the subject. Such persons shall be in the classified service and shall be appointed after competitive examination according to the law and the rules of the Civil Service Commission governing the classified service. No person interested, either directly or indirectly, in any patented article required to be used on or in connection with any of such systems, devices, and appli-

ances or who has any financial interest in any carrier or in any concern dealing in railway supplies shall be used for such purpose.

(e) Unlawful use of system, etc.

It shall be unlawful for any carrier to use or permit to be used on its line any system, device, or appliance covered by this section unless such apparatus, with its controlling and operating appurtenances, is in proper condition and safe to operate in the service to which it is put, so that the same may be used without unnecessary peril to life and limb, and unless such apparatus, with its controlling and operating appurtenances, has been inspected from time to time in accordance with the provisions of this section and is able to meet the requirements of such test or tests as may be prescribed in the rules and regulations provided for in this section.

(f) Report of failure of system, etc., and accidents

Each carrier shall report to the Secretary of Transportation in such manner and to such extent as may be required by the Secretary, failures of such systems, devices, or appliances to indicate or function as intended; and in case of accident resulting from failure of any such system, device, or appliance to indicate or function as intended, and resulting in injury to person or property which is reportable under the rules of the Secretary, a statement forthwith must be made in writing of the fact of such accident by the carrier owning or maintaining such system, device, or appliance to the Secretary; whereupon the facts concerning such accident shall be subject to investigation as provided in sections 40 to 42 of title 45.

(g) Duties and powers of Secretary of Transportation

It shall be the duty of the Secretary of Transportation to see that the requirements of this section and the orders, rules, regulations, standards, and instructions made, prescribed, or approved hereunder are observed by carriers, and all powers granted prior to August 26, 1937, to the Secretary are extended to him in the execution of this section.

(h) Penalties; enforcement

Any carrier which violates any provision of this section, or which fails to comply with any of the orders, rules, regulations, standards, or instructions made, prescribed, or approved hereunder shall be liable to a penalty of not less than $250 and not more than $2,500 for each such violation and not less than $250 and not more than $2,500 for each and every day such violation, refusal, or neglect continues, to be recovered in a suit or suits to be brought by the United States attorney in the district court of the United States having jurisdiction in the locality where such violations shall have been committed. It shall be the duty of such attorneys to bring such suits upon duly verified information being lodged with them showing such violations having occurred; and it shall be the duty of the Secretary of Transportation to lodge with the proper United States attorneys information of any violations of this section coming to its knowledge.

(Feb. 4, 1887, ch. 104, pt. I, § 25, formerly § 26, as added Feb. 28, 1920, ch. 91, § 441, 41 Stat. 498, amended Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543; Aug. 26, 1937, ch. 818, 50 Stat. 835, renumbered Sept. 18, 1940, ch. 722, title I, § 14(b), 54 Stat. 919, and amended Oct. 15, 1966, Pub. L. 89-670, § 6(e)(6)(A), 80 Stat. 939, July 8, 1976, Pub. L. 94-348, § 3(d), 90 Stat. 818.)

REFERENCES IN TEXT

Commission, referred to in subsec. (c), means the Interstate Commerce Commission.

AMENDMENTS

1976—Subsec. (h). Pub. L. 94-348 substituted "not less than $250 and not more than $2,500 for each violation and not less than $250 and not more than $2,500" for "$100 for each such violation and $100".

1937—Act Aug. 26, 1937, divided section into subsections and amended section generally.

1935—Act Aug. 9, 1935, substituted "this part", which has been translated as "this chapter", for "this Act", meaning act Feb. 4, 1887, known as the Interstate Commerce Act.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" and "Secretary" have been substituted for "Interstate Commerce Commission" and "Commission" pursuant to Pub. L. 89-670, which transferred to and vested in the Secretary of Transportation all functions, powers, and duties of the Interstate Commerce Commission and the Chairman, members, offices, and officers thereof under this section relating generally to safety appliances. See section 1655(e)(6)(A) of this title.

RAILROAD SAFETY VIOLATIONS; MINIMUM AMOUNTS FOR COMPROMISED PENALTIES

Penalties assessed under this section not to be compromised by the Secretary for an amount less than $250, see section 3(e) of Pub. L. 94-348, set out as a note under section 952 of Title 31, Money and Finance.

CROSS REFERENCES

Civil-service laws, generally, see Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1655 of this title; title 45 section 715.

§ 26a. State or subdivision income tax withholding on compensation paid to interstate railroad, express company, or sleeping car company employees

(a) Withholding where employee earns more than 50 per centum of compensation paid by carrier to him or where employee resides; filing of information return by carrier

No part of the compensation paid by any railroad, express company, or sleeping car company, subject to the provisions of this chapter, to an employee (1) who performs his regularly assigned duties as such an employee on a locomotive, car, or other trackborne vehicle in more than one State, or (2) who is engaged principally in maintaining roadways, signals, communications, and structures or in operating motortrucks out of railroad terminals in more than one State, shall be withheld for income tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision wherein more than 50 per centum of the compensation paid by the carrier to such employee is earned: *Provided, however,* That if the employee did not earn more than 50 per centum of his compensation from said carrier in any one State or any subdivision thereof during the preceding calendar year, then with-

holding shall be required only for the State or subdivision of the employee's residence, as shown on the employment records of any such carrier; nor shall any such carrier file any information return or other report for income tax purposes with respect to such compensation with any State or subdivision thereof other than such State or subdivision of residence and the State or subdivision for which the withholding of such tax has been required under this subsection.

(b) State or subdivision where employee deemed to have earned more than 50 per centum of compensation

(1) For the purposes of subsection (a)(1) of this section, an employee shall be deemed to have earned more than 50 per centum of his compensation in any State or subdivision thereof in which the mileage traveled by him in such State or subdivision is more than 50 per centum of the total mileage traveled by him in the calendar year while so employed.

(2) For the purposes of subsection (a)(2) of this section, an employee shall be deemed to have earned more than 50 per centum of his compensation in any State or subdivision thereof in which the time worked by him in such State or subdivision is more than 50 per centum of the total time worked by him in the calendar year while so employed.

(c) Definitions

For the purposes of this section the term "State" also means the District of Columbia; and the term "compensation" shall mean all moneys received for services rendered by an employee, as defined in subsection (a) of this section, in the performance of his duties and shall include wages and salary.

(Feb. 4, 1887, ch. 104, pt. I, § 26, as added Dec. 23, 1970, Pub. L. 91-569, § 1, 84 Stat. 1499.)

EFFECTIVE DATE

Section 5 of Pub. L. 91-569 provided that: "The amendments made by this Act [enacting sections 27, 325a, 922b, and 1512 of this title, amending section 302 of this title, and enacting provisions set out as notes under this section] shall become effective on the first day of the first calendar year beginning after the date of enactment of this Act [Dec. 23, 1970]."

SEPARABILITY OF PROVISIONS

Section 6 of Pub. L. 91-569 provided that: "If any provision of this Act [enacting sections 27, 325a, 922b, and 1512 of this title, amending section 302 of this title, and enacting provisions set out as notes under this section] or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of the provision to other persons or other circumstances shall not be affected thereby."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 6362.

§ 26b. Office of Rail Public Counsel

(1) Establishment; statutory provisions applicable

There shall be established, within 60 days after February 5, 1976, a new independent office affiliated with the Commission to be known as the Office of Rail Public Counsel. The Office of Rail Public Counsel shall function continuously pursuant to this section and other applicable Federal laws.

(2) Director; appointment; term of office; responsibilities; compensation

(a) The Office of Rail Public Counsel shall be administered by a Director. The Director shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The term of office of the Director shall be 4 years. He shall be responsible for the discharge of the functions and duties of the Office of Rail Public Counsel. He shall be appointed and compensated, without regard to the provisions of title 5 governing appointments in the competitive service, classification, and General Schedule pay rates, at a rate not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title.

(3) Powers and duties of Director

The Director is authorized to appoint, fix the compensation, and assign the duties of employees of such Office and to procure temporary and intermittent services to the same extent as is authorized under section 3109 of title 5. Each bureau, office, or other entity of the Commission and each department, agency, and instrumentality of the executive branch of the Federal Government and each independent regulatory agency of the United States is authorized to provide the Office of Rail Public Counsel with such information and data as it requests. The Director is authorized to enter into, without regard to section 5 of title 41, such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of his functions and duties. The Director shall submit a monthly report on the activities of the Office of Rail Public Counsel to the Chairman of the Commission, and the Commission, in its annual report to the Congress, shall evaluate and make recommendations with respect to such Office and its activities, accomplishments, and shortcomings.

(4) Additional duties and responsibilities of Office

In addition to any other duties and responsibilities prescribed by law, the Office of Rail Public Counsel—

(a) shall have standing to become a party to any proceeding, formal or informal, which is pending or initiated before the Commission and which involves a common carrier by railroad subject to this chapter;

(b) may petition the Commission for the initiation of proceedings on any matter within the jurisdiction of the Commission which involves a common carrier by railroad subject to this chapter;

(c) may seek judicial review of any Commission action on any matter involving a common carrier by railroad subject to this chapter, to the extent such review is authorized by law for any person and on the same basis;

(d) shall solicit, study, evaluate, and present before the Commission, in any proceeding, formal or informal, the views of those communities and users of rail service affected by proceedings initiated by or pending before the Commission, whenever the Director determines, for whatever reason (such as size or location), that such community or user of rail service might not otherwise be adequately

represented before the Commission in the course of such proceedings; and

(e) shall evaluate and represent, before the Commission and before other Federal agencies when their policies and activities significantly affect rail transportation matters subject to the jurisdiction of the .Commission, and shall by other means assist the constructive representation of, the public interest in safe, efficient, reliable, and economical rail transportation services.

In the performance of its duties under this paragraph, the Office of Rail Public Counsel shall assist the Commission in the development of a public interest record in proceedings before the Commission.

(5) Concurrent submission of budget requests and estimates to President and Congress

The budget requests and budget estimates of the Office of Rail Public Counsel shall be submitted concurrently to the Congress and to the President.

(6) Authorization of appropriations

There are authorized to be appropriated to the Office of Rail Public Counsel for the purpose of carrying out the provisions of this section not to exceed $500,000 for the fiscal year ending June 30, 1976, not to exceed $500,000 for the fiscal year transition period ending September 30, 1976, and not to exceed $2,000,000 for the fiscal year ending September 30, 1977.

(Feb. 4, 1887, ch. 104, pt. I, § 27, as added Feb. 5, 1976, Pub. L. 94-210, title III, § 304(a), 90 Stat. 51.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 45 section 715.

§ 26c. Discriminatory taxation by States, political subdivisions, or governmental entities or persons acting on behalf of States or subdivisions

(1) Particular acts unlawful

Notwithstanding the provisions of section 302(b) of this title, any action described in this subsection is declared to constitute an unreasonable and unjust discrimination against, and an undue burden on, interstate commerce. It is unlawful for a State, a political subdivision of a State, or a governmental entity or person acting on behalf of such State or subdivision to commit any of the following prohibited acts:

(a) The assessment (but only to the extent of any portion based on excessive values as hereinafter described), for purposes of a property tax levied by any taxing district, of transportation property at a value which bears a higher ratio to the true market value of such transportation property than the ratio which the assessed value of all other commercial and industrial property in the same assessment jurisdiction bears to the true market value of all such other commercial and industrial property.

(b) The levy or collection of any tax on an assessment which is unlawful under subdivision (a).

(c) The levy or collection of any ad valorem property tax on transportation property at a tax rate higher than the tax rate generally applicable to commercial and industrial property in the same assessment jurisdiction.

(d) The imposition of any other tax which results in discriminatory treatment of a common carrier by railroad subject to this chapter.

(2) Judicial relief; limitations

Notwithstanding any provision of section 1341 of title 28, or of the constitution or laws of any State, the district courts of the United States shall have jurisdiction, without regard to amount in controversy or citizenship of the parties, to grant such mandatory or prohibitive injunctive relief, interim equitable relief, and declaratory judgments as may be necessary to prevent, restrain, or terminate any acts in violation of this section, except that—

(a) such jurisdiction shall not be exclusive of the jurisdiction which any Federal or State court may have in the absence of this subsection;

(b) the provisions of this section shall not become effective until 3 years after February 5, 1976;

(c) no relief may be granted under this section unless the ratio of assessed value to true market value, with respect to transportation property, exceeds by at least 5 per centum the ratio of assessed value to true market value, with respect to all other commercial and industrial property in the same assessment jurisdiction;

(d) the burden of proof with respect to the determination of assessed value and true market value shall be that declared by the applicable State law; and

(e) in the event that the ratio of the assessed value of all other commercial and industrial property in the assessment jurisdiction to the true market value of all such other commercial and industrial property cannot be established through the random-sampling method known as a sales assessment ratio study (conducted in accordance with statistical principles applicable to such studies) to the satisfaction of the court hearing the complaint that transportation property has been or is being assessed or taxed in contravention of the provisions of this section, then the court shall hold unlawful an assessment of such transportation property at a value which bears a higher ratio to the true market value of such transportation property than the assessed value of all other property in the assessment jurisdiction in which is included such taxing district and subject to a property tax levy bears to the true market value of all such other property, and the collection of any ad valorem property tax on such transportation property at a tax rate higher than the tax rate generally applicable to taxable property in the taxing district.

(3) Definitions

As used in this section, the term—

(a) "assessment" means valuation for purposes of a property tax levied by any taxing district;

(b) "assessment jurisdiction" means a geographical area, such as a State or a county, city, township, or special purpose district within such State which is a unit for purposes

of determining the assessed value of property for ad valorem taxation;

(c) "commercial and industrial property" or "all other commercial and industrial property" means all property, real or personal, other than transportation property and land used primarily for agricultural purposes or primarily for the purpose of growing timber, which is devoted to a commercial or industrial use and which is subject to a property tax levy; and

(d) "transportation property" means transportation property, as defined in regulations of the Commission, which is owned or used by a common carrier by railroad subject to this chapter or which is owned by the National Railroad Passenger Corporation.

(Feb. 4, 1887, ch. 104, pt. I, § 28, as added Feb. 5, 1976, Pub. L. 94-210, title IV, § 306, 90 Stat. 54, and amended Oct. 19, 1976, Pub. L. 94-555, title II, § 220(*o*), 90 Stat. 2630.)

AMENDMENTS

1976—Pub. L. 94-555 inserted reference to discriminatory State taxation in section catchline.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-555 effective on October 1, 1976, see section 303 of Pub. L. 94-555, set out as an Effective Date of 1976 Amendment note under section 543 of Title 45, Railroads.

§ 27. Short title

This chapter may be cited as part I of the Interstate Commerce Act.

(Feb. 4, 1887, ch. 104, pt. I, § 29, as added Feb. 28, 1920, ch. 91, § 441, 41 Stat. 499, amended Aug. 9, 1935, ch. 498, § 1, 49 Stat. 543, renumbered § 26 and amended Sept. 18, 1940, ch. 722, title I, § 14(c), 54 Stat. 919, renumbered § 27, Dec. 23, 1970, Pub. L. 91-569, § 1, 84 Stat. 1499, renumbered § 29, Feb. 5, 1976, Pub. L. 94-210, title III, § 304(a), 90 Stat. 51.)

REFERENCES IN TEXT

The Interstate Commerce Act, referred to in text, is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended. Part I of the Interstate Commerce Act is classified generally to this chapter (§ 1 et seq.). For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out below and Tables volume.

AMENDMENTS

1940—Act Sept. 18, 1940, renumbered this section to be section 26 of act Feb. 4, 1887, and changed the style of citing the chapter from "Interstate Commerce Act" to "part I of the Interstate Commerce Act."

1935—Act Aug. 9, 1935, made this chapter Part I of the Interstate Commerce Act, and provided that "such part I may continue to be cited as the 'Interstate Commerce Act'."

SHORT TITLE OF 1973 AMENDMENT

Pub. L. 93-69, title II, § 202, July 10, 1973, 87 Stat. 168, provided that: "This title [enacting par. (4) of section 15a of this title] may be cited as the 'Railroad Rate Adjustment Act of 1973'."

SHORT TITLE OF INTERSTATE COMMERCE ACT

Act Sept. 18, 1940, ch. 722, § 1, 54 Stat. 899, amended the Interstate Commerce Act by inserting before Part I thereof (chapter 1 of this title) the following provision entitled "Short Title": "This Act [chapters 1, 8, 12, 13, and 19 of this title] may be cited as the Interstate Commerce Act."

INTERSTATE COMMERCE ACT

The Interstate Commerce Act originally consisted of but one part, set out in this chapter. This section was added to the original act of Feb. 4, 1887, as section 27 of that act by act of Feb. 28, 1920, and provided that the act [this chapter] might be cited as the "Interstate Commerce Act." A new part, designated part II, was added to the original act by act of Aug. 9, 1935, and set out in this code as chapter 8 (§ 301 et seq.) of this title. The sections in existence prior to Aug. 9, 1935, were redesignated part I. Said sections were amended by the act of Aug. 9, 1935, by substituting for the words "this act" [translated in this code as "this chapter"], wherever they occurred, the words "this part." Said sections continued to be cited as the "Interstate Commerce Act," part II being cited as the "Motor Carrier Act, 1935." The act of Sept. 18, 1940, amended this section by renumbering it as section 26 of the original act and providing that the sections set out in this chapter might be cited as "part I of the Interstate Commerce Act." Section 1 of the act Sept. 18, 1940 amended the Interstate Commerce Act by inserting before part I thereof (this chapter) a provision that chapters 1, 8, 12, 13, and 19 of this title "may be cited as the Interstate Commerce Act."

Parts II and III of the Interstate Commerce Act, see chapters 8 (§ 301 et seq.) and 12 (§ 901 et seq.) of this title.

Part IV of the Interstate Commerce Act, see chapter 13 (§ 1001 et seq.) of this title.

Part V of the Interstate Commerce Act, see chapter 19 (§ 1231 et seq.) of this title.

CHAPTER 2—LEGISLATION SUPPLEMENTARY TO "INTERSTATE COMMERCE ACT"

Sec.
41. Liability of corporation carriers and agents; offenses and penalties.
(1) Liability of corporation common carriers; offenses; penalties; jurisdiction
(2) Liabilities for acts of agents; departure from published rates.
(3) Receiving rebates; additional penalty and recovery thereof.
42. Parties included in proceedings to enforce law.
43. Proceedings in equity to enforce tariffs, etc.; United States attorneys; damages; witnesses; precedence.
44, 45. Transferred.
46. Neglect or refusal to attend and testify, or to answer lawful inquiries, or to produce books, etc.; offense; punishment.
47, 48. Repealed.
49. Transferred.
50. Agent in Washington for service; service in default of designation.
51. Proceedings relating to rail and water routes; orders.
52. Railroads to serve employees in valuation work; compensation.
53. Exception to law prohibiting free transportation.
54. Repealed.
55. Policy in making rate adjustments; investigation of rates authorized.
56. Repealed.
57. Auditing accounts of Commission.
58. Repealed.
59. Omitted.
60. Divesting prison made goods of interstate character.
61 to 64. Repealed.
65. Government traffic; rates.
65a. Readjustment of fares, rates, and charges to shippers.
66. Payment for transportation.
(a) Deduction of overcharges.
(b) Review of action by General Services Administration; limitations.
(c) Advance payment.
(d) Definition.
67. Transferred.

CHAPTER REFERRED TO IN D.C. CODE

This chapter is referred to in section 45-1607 of the District of Columbia Code.

§ 41. Liability of corporation carriers and agents; offenses and penalties

(1) Liability of corporation common carriers; offenses; penalties; jurisdiction

Anything done or omitted to be done by a corporation common carrier, subject to the Act to regulate commerce and the Acts amendatory thereof, which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said Acts or under sections 41, 42, or 43 of this title, shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said Acts or by sections 41, 42, or 43 of this title, with reference to such persons, except as such penalties are herein changed. The willful failure upon the part of any carrier subject to said Acts to file and publish the tariffs or rates and charges as required by said Acts, or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine of not less than $1,000 nor more than $20,000 for each offense; and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce and the Acts amendatory thereof whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to regulate commerce and the Acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. Every person or corporation, whether carrier or shipper, who shall, knowingly, offer, grant, or give, or solicit, accept, or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than $1,000 nor more than $20,000: *Provided*, That any person, or any officer or director of any corporation subject to the provisions of sections 41, 42, or 43 of this title or of the Act to regulate commerce and the Acts amendatory thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by any such corporation, who shall be convicted as aforesaid, shall, in addition to the fine herein provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court. Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

(2) Liabilities for acts of agents; departure from published rates

In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier, or shipper, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or shipper as well as that of the person. Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the Act to regulate commerce or Acts amendatory thereof, or participates in any rates so filed or published, that rate as against such carrier, its officers or agents, in any prosecution begun under sections 41, 42, or 43 of this title, shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section.

(3) Receiving rebates; additional penalty and recovery thereof

Any person, corporation, or company who shall deliver property for interstate transportation to any common carrier, subject to the provisions of sections 41, 42, or 43 of this title, or for whom as consignor or consignee, any such carrier shall transport property from one State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or foreign country, who shall knowingly by employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transportation of such property, as fixed by the schedules of rates provided for in said sections, shall in addition to any penalty provided by said sections forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and the Attorney General of the United States is authorized and directed, whenever he has reasonable grounds to believe that any such person, corporation, or company has knowingly received or accepted from any such common carrier any sum of money or other valuable consideration as a rebate or offset as aforesaid, to institute in any court of the United States of competent jurisdiction, a civil action to collect the said sum or sums so forfeited as aforesaid; and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action, may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be.

(Feb. 19, 1903, ch. 708, § 1, 32 Stat. 847; June 29, 1906, ch. 3591, § 2, 34 Stat. 587.)

REFERENCES IN TEXT

"The Act to regulate commerce and the Acts amendatory thereof" and "said Acts", referred to in pars. (1) and (2), is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, known as the Interstate Commerce Act, which is classified generally to chapters 1, 8, 12, 13, and 19 (§ 1 et seq., 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

AMENDMENTS

1906—Act June 29, 1906, amended section generally and divided section into subsections.

SHORT TITLE OF 1972 AMENDMENT

Pub. L. 92-550, § 2, Oct. 25, 1972, 86 Stat. 1164, provided that: "This Act [amending section 66 of this title] may be cited as the 'Transportation Payment Act of 1972'."

CROSS REFERENCES

Free transportation for passengers prohibited, jurisdiction of offenses, see section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 43, 1021 of this title.

§ 42. Parties included in proceedings to enforce law

In any proceeding for the enforcement of the provisions of the statutes relating to interstate commerce, whether such proceeding be instituted before the Interstate Commerce Commission or be begun originally in any district court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

(Feb. 19, 1903, ch. 708, § 2, 32 Stat. 848; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.)

CHANGE OF NAME

"District court" was substituted for "circuit court" to conform to act Mar. 3, 1911, which transferred the powers and duties of the circuit courts to the district courts.

CROSS REFERENCES

Free transportation for passengers prohibited, jurisdiction of offenses, see section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 41, 43, 1021 of this title.

§ 43. Proceedings in equity to enforce tariffs, etc.; United States attorneys; damages; witnesses; precedence

Whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is committing any discriminations forbidden by law, a petition may be presented alleging such facts to the district court of the United States sitting in equity having jurisdiction; and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or State, it may be dealt with, inquired of, tried, and determined in either such judicial district or State, whereupon it shall be the duty of the court summarily to inquire into the circumstances, upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporations parties thereto as the court may deem necessary, and upon being satisfied of the truth of the allegations of said petition said court shall enforce an observance of the published tariffs or direct and require a discontinuance of such discrimination by proper orders, writs, and process, which said orders, writs, and process may be enforceable as well against the parties interested in the traffic as against the carrier, subject to the right of appeal as now provided by law. It shall be the duty of the several United States attorneys, whenever the Attorney General shall direct, either of his own motion or upon the request of the Interstate Commerce Commission, to institute and prosecute such proceedings, and the proceedings provided for by sections 41, 42, or 43 of this title shall not preclude the bringing of suit for the recovery of damages by any party injured, or any other action provided by said Act approved February 4, 1887, entitled An Act to regulate commerce and the Acts amendatory thereof. And in proceedings under sections 41, 42, or 43 of this title and the Acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and the shipper, which relate directly or indirectly to such transaction.

(Feb. 19, 1903, ch. 708, § 3, 32 Stat. 848; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 25, 1948, ch. 646, § 1, 62 Stat. 909; Oct. 15, 1970, Pub. L. 91-452, title II, § 244, 84 Stat. 931; Dec. 21, 1974, Pub. L. 93-528, § 6(b), 88 Stat. 1709.)

REFERENCES IN TEXT

"Said Act approved February 4, 1887, entitled An Act to regulate commerce and the Acts amendatory thereof" and "the Acts to regulate commerce," referred to in text, is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, known as the Interstate Commerce Act, which is classified generally to chapters 1, 8, 12, 13, and 19 (§§ 1 et seq., 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

AMENDMENTS

1974—Pub. L. 93-528 struck out provisions making sections 44 and 45 of this title applicable to cases prosecuted under the direction of the Attorney General in the name of the Interstate Commerce Commission.

1970—Pub. L. 91-452 struck out the provisions that the claim that any compelled testimony or evidence which tends to criminate the person giving such evidence would not excuse such person from testifying or such corporation from producing its books and papers,

but that no person would be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, etc., for which he testifies or produces evidence in such proceeding.

CHANGE OF NAME

"District court" was substituted for "circuit court" to conform to act Mar. 3, 1911, which transferred the powers and duties of the circuit courts to the district courts.

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorneys" for "district attorneys" and "district attorneys of the United States". See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision note thereunder.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISIONS

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

CROSS REFERENCES

Attendance and examination of witnesses, depositions, see section 12 of this title.

Free transportation for passengers prohibited, jurisdiction of offenses, see section 1 of this title.

Immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

Orders, writs, and process under this section may run, be served, and be returnable anywhere in United States, see section 2321 of Title 28, Judiciary and Judicial Procedure.

Suits for recovery of damages, see section 8 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 41, 1021 of this title; title 28 sections 2321, 2323.

§§ 44, 45. Transferred

CODIFICATION

Section 44, acts Feb. 11, 1903, ch. 544, § 1, 32 Stat. 823; June 25, 1910, ch. 428, 36 Stat. 854; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Apr. 6, 1942, ch. 210, § 1, 56 Stat. 198; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Dec. 21, 1974, Pub. L. 93-528, § 4, 88 Stat. 1708, which related to expedition of actions by United States involving general public importance, was transferred to section 28 of Title 15, Commerce and Trade.

Section 45, acts Feb. 11, 1903, ch. 544, § 2, 32 Stat. 823; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 9, 1944, ch. 239, 58 Stat. 272; June 25, 1948, ch. 646, § 17, 62 Stat. 989; Dec. 21, 1974, Pub. L. 93-528, § 5, 88 Stat. 1709, which related to appeals to Supreme Court, was transferred to section 29 of Title 15.

§ 46. Neglect or refusal to attend and testify, or to answer lawful inquiries, or to produce books, etc.; offense; punishment

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs, contracts, agreements, and documents, if in his power to do so, in obedience to the subpoena or lawful requirement of the Commission shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by fine not less than $100 nor more than $5,000, or by imprisonment for not more than one year or by both such fine and imprisonment.

(Feb. 11, 1893, ch. 83, 27 Stat. 443; Oct. 15, 1970, Pub. L. 91-452, title II, § 245, 84 Stat. 931.)

AMENDMENTS

1970—Pub. L. 91-452 struck out the provisions which related to the immunity from prosecution of any person compelled to testify or produce evidence, documentary or otherwise, before the Interstate Commerce Commission, or in obedience to its subpoena, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of chapter 1 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISIONS

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

CROSS REFERENCES

Atomic Energy Commission studies and investigations, section as applicable, see section 2201 of Title 42, The Public Health and Welfare.

Attendance of witnesses and production of documents, see section 12 of this title.

Commodity Exchange Act, provisions relating to immunity of witnesses as applicable to, see section 15 of Title 7, Agriculture.

Immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

Perjury and subornation of perjury, see sections 1621 and 1622 of Title 18.

Self-incrimination, see Const. Amend. 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 916, 1017 of this title; title 50 App. section 2406.

§§ 47, 48. Repealed. Pub. L. 91-452, title II, §§ 209, 210, Oct. 15, 1970, 84 Stat. 929

Section 47, act Feb. 25, 1903, ch. 755, § 1, 32 Stat. 904, granted immunity from prosecution to witnesses testifying or producing evidence, documentary or otherwise, in any proceeding, suit, or prosecution under chapters 1, 8, 12, 13, and 19 of this title. See section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

Section 48, act June 30, 1906, ch. 3920, 34 Stat. 798, provided that, under the immunity provisions of sections 43, 46, and 47 of this title, immunity was to extend only to a natural person who, in obedience to a subpoena, testified or produced evidence.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISIONS

Repeal of sections by Pub. L. 91-452 not to affect any immunity to which any individual was entitled by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

§ 49. Transferred

CODIFICATION

Section, acts Feb. 4, 1887, ch. 104, pt. I, § 23, formerly Mar. 2, 1889, ch. 382, § 10, 25 Stat. 862; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167, renumbered May 16, 1942, ch. 318, § 5, 56 Stat. 301, which related to mandamus to obtain equal facilities for shippers, was transferred to section 23 of this title pursuant to renumbering by act May 16, 1942.

§ 50. Agent in Washington for service; service in default of designation

It shall be the duty of every common carrier subject to the provisions of chapter 1 of this title to designate in writing an agent in the city of Washington, District of Columbia, upon whom service of all notices and processes may be made for and on behalf of said common carrier in any proceeding or suit pending before the Interstate Commerce Commission or before the district court, and to file such designation in the office of the secretary of the Interstate Commerce Commission, which designation may from time to time be changed by like writing similarly filed; and thereupon service of all notices and processes may be made upon such common carrier by leaving a copy thereof with such designated agent at his office or usual place of residence in the city of Washington, with like effect as if made personally upon such common carrier, and in default of such designation of such agent, service of any notice or other process in any proceeding before said Interstate Commerce Commission or district court may be made by posting such notice or process in the office of the secretary of the Interstate Commerce Commission.

(June 18, 1910, ch. 309, § 6, 36 Stat. 544; Oct. 22, 1913, ch. 32, 38 Stat. 219.)

CHANGE OF NAME

Words "district court" substituted for "commerce court" under authority of act Oct. 22, 1913, which abolished the commerce court and transferred its jurisdiction to the several district courts and repealed all acts or parts of acts insofar as they related to the establishment of the commerce court.

CROSS REFERENCES

Service of orders of Commission and notices of proceedings, see section 16 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16 of this title.

§ 51. Proceedings relating to rail and water routes; orders

The orders of the Interstate Commerce Commission relating to paragraphs (15) to (17) of section 5 of this title and paragraph (11) of section 6 of this title shall only be made upon formal complaint or in proceedings instituted by the Commission of its own motion and after full hearing. The orders provided for in said paragraphs shall be served in the same manner and enforced by the same penalties and proceedings as are the orders of the Commission made under the provisions of section 15 of this title, and they may be conditioned for the payment of any sum or the giving of security for the payment of any sum or the discharge of any obligation which may be required by the terms of said order.

(Aug. 24, 1912, ch. 390, § 11, 37 Stat. 568.)

REFERENCES IN TEXT

The words "paragraphs (15) to (17) of section 5 of this title and paragraph (11) of section 6 of this title, referred to in text, originally read "this section", meaning section 11 of act Aug. 24, 1912. Such section 11, besides containing the provisions of this section, also amended sections 5 and 6 of this title by adding paragraphs originally numbered 9, 10, and 11 to section 5 and paragraph 13 to section 6. Said paragraphs 9, 10, and 11 of section 5 were renumbered 15, 16, and 17, respectively, by acts June 16, 1933, ch. 91, title II, § 203, 48 Stat. 220; Sept. 18, 1940, ch. 722, § 7, 54 Stat. 905; and Feb. 5, 1976, Pub. L. 94-210, title IV, § 403(a), 90 Stat. 63. Said paragraph 13 of section 6 of this title was renumbered paragraph 11 of that section by act Sept. 18, 1940, ch. 722, § 8(c), 54 Stat. 910.

CODIFICATION

Section is last paragraph of section 11 of act Aug. 24, 1912, known as the Panama Canal Act of 1912.

§ 52. Railroads to serve employees in valuation work; compensation

It shall be the duty of every common carrier by railroad whose property is being valued under section 19a of this title to transport the engineers, field parties, and other employees of the United States who are actually engaged in making surveys and other examination of the physical property of said carrier necessary to execute said section from point to point on said railroad as may be reasonably required by them in the actual discharge of their duties; and, also, to move from point to point and store at such points as may be reasonably required the cars of the United States which are being used to house and maintain said employees; and, also, to carry the supplies necessary to maintain said employees and the other property of the United States actually used on said railroad in said work of valuation. The service above required shall be regarded as a special service and shall be rendered under such forms and regulations and for such reasonable compensation as may be prescribed by the Interstate Commerce Commission and as will insure an accurate record and account of the service rendered by the railroad, and such evidence of transportation, bills of lading, and so forth, shall be furnished to the Commission as may from time to time be required by the Commission.

(Aug. 1, 1914, ch. 223, § 1, 38 Stat. 627.)

CODIFICATION

Section is from act Aug. 1, 1914, known as the Sundry Civil Appropriation Act.

§ 53. Exception to law prohibiting free transportation

Nothing contained in the Act to regulate Commerce, approved February 4, 1887, or the Acts amendatory thereof, shall be so construed by the Interstate Commerce Commission, or by

the courts, as to prevent the lessee of the Cincinnati Southern Railway from complying with its obligation assumed in leasing said railway to furnish free transportation to the trustees of said Cincinnati Southern Railway, their officers and agents: *Provided*, That the free transportation referred to shall be furnished only when persons entitled thereto are traveling on the business of the company.

(Feb. 17, 1917, ch. 84, 39 Stat. 922.)

REFERENCES IN TEXT

"The Act to regulate commerce, approved February 4, 1887, or the Acts amendatory thereof", referred to in text, is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, known as the Interstate Commerce Act, which is classified generally to chapters 1, 8, 12, 13, and 19 (§§ 1 et seq., 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

§ 54. Repealed. May 29, 1928, ch. 901, § 1(114), 45 Stat. 994

Section, act Mar. 4, 1915, ch. 147, § 1, 38 Stat. 1140, related to statements showing employments under appropriations.

§ 55. Policy in making rate adjustments; investigation of rates authorized

It is declared to be the true policy in rate making to be pursued by the Interstate Commerce Commission in adjusting freight rates, that the conditions which at any given time prevail in our several industries should be considered insofar as it is legally possible to do so, to the end that commodities may freely move.

The Interstate Commerce Commission is authorized and directed to make a thorough investigation of the rate structure of common carriers subject to the Interstate Commerce Act, in order to determine to what extent and in what manner existing rates and charges may be unjust, unreasonable, unjustly discriminatory, or unduly preferential, thereby imposing undue burdens, or giving undue advantage as between the various localities and parts of the country, the various classes of traffic, and the various classes and kinds of commodities, and to make, in accordance with law, such changes, adjustments, and redistribution of rates and charges as may be found necessary to correct any defects so found to exist. In making any such change, adjustment, or redistribution the Commission shall give due regard, among other factors, to the general and comparative levels in market value of the various classes and kinds of commodities as indicated over a reasonable period of years to a natural and proper development of the country as a whole, and to the maintenance of an adequate system of transportation. In the progress of such investigation the Commission shall, from time to time, and as expeditiously as possible, make such decisions and orders as it may find to be necessary or appropriate upon the record then made in order to place the rates upon designated classes of traffic upon a just and reasonable basis with relation to other rates. Such investigation shall be conducted with due regard to other investigations or proceedings affecting the rate adjustments which may be pending before the Commission.

In view of the existing depression in agriculture, the Commission is directed to effect with the least practicable delay such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture affected by that depression, including livestock, at the lowest possible lawful rates compatible with the maintenance of adequate transportation service: *Provided*, That no investigation or proceeding resulting from the adoption of this section shall be permitted to delay the decision of cases, on January 30, 1925, pending before the Commission involving rates on products of agriculture, and that such cases shall be decided in accordance with this section.

(Jan. 30, 1925, ch. 120, 43 Stat. 801.)

REFERENCES IN TEXT

The interstate commerce act, referred to in text, is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, which is classified generally to chapters 1, 8, 12, 13, and 19 (§§ 1 et seq., 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

CROSS REFERENCES

National Transportation Policy, see note preceding section 1 of this title.

§ 56. Repealed. May 29, 1928, ch. 901, § 1(113), 45 Stat. 994

Section, act Oct. 2, 1888, ch. 1069, 25 Stat. 530, related to inclusion of statement of expenditures of Commission in annual report to Congress.

§ 57. Auditing accounts of Commission

Expenses of the Interstate Commerce Commission shall be audited by the General Accounting Office.

(Mar. 2, 1889, ch. 411, § 1, 25 Stat. 954; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

CODIFICATION

Words "General Accounting Office" were substituted for "proper accounting officer of the Treasury" to conform to act June 10, 1921, which transferred the powers and duties of the six auditors of the Treasury Department to the General Accounting Office and is set out as section 44 of Title 31, Money and Finance.

Section is from act Mar. 2, 1889, known as the Sundry Civil Appropriation Act, 1890.

§ 58. Repealed. June 30, 1949, ch. 288, title VI, § 602(a)(27), 63 Stat. 401, renumbered Sept. 5, 1950, ch. 849, § 6(a), (b), 64 Stat. 583

Section, act Aug. 1, 1914, ch. 223, § 1, 38 Stat. 627, related to exchange of typewriters, adding machines, and other devices, and is now covered by section 471 et seq. of Title 40, Public Buildings, Property, and Works.

EFFECTIVE DATE OF REPEAL

Repeal of section effective July 1, 1949, see section 505 of act June 30, 1949.

§ 59. Omitted

CODIFICATION

Section, act June 19, 1934, ch. 648, title II, § 1, 48 Stat. 1056, related to the drought emergency existing in June 1934.

§ 60. Divesting prison made goods of interstate character

Five years after January 19, 1929, all goods, wares, and merchandise manufactured, produced, or mined, wholly or in part, by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal and/or reformatory institutions, except commodities manufactured in Federal penal and correctional institutions for use by the Federal Government, transported into any State or Territory of the United States and remaining therein for use, consumption, sale, or storage, shall upon arrival and delivery in such State or Territory be subject to the operation and effect of the laws of such State or Territory to the same extent and in the same manner as though such goods, wares, and merchandise had been manufactured, produced, or mined in such State or Territory, and shall not be exempt therefrom by reason of being introduced in the original package or otherwise.

(Jan. 19, 1929, ch. 79, §§ 1, 2, 45 Stat. 1084.)

CODIFICATION

Section was formerly set out as section 65 of this title.

CROSS REFERENCES

Offenses in transporting convict-made goods, see sections 1761 and 1762 of Title 18, Crimes and Criminal Procedure.

§§ 61 to 64. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862

Section 61, act July 24, 1935, ch. 412, § 1, 49 Stat. 494, related to transportation or importation of convict made goods and is now covered by section 1761 of Title 18, Crimes and Criminal Procedure.

Section 62, act July 24, 1935, ch. 412, § 2, 49 Stat. 494, related to marking packages and is now covered by section 1762 of Title 18.

Section 63, act July 24, 1935, ch. 412, § 3, 49 Stat. 495, related to penalties for violations and is now covered by section 1762 of Title 18.

Section 64, act July 24, 1935, ch. 412, § 4, 49 Stat. 495, related to jurisdiction of violations.

EFFECTIVE DATE OF REPEAL

Repeal of sections 61 to 64 effective Sept. 1, 1948, see section 38 of act June 25, 1948, set out as an Effective Date note preceding section 1 of Title 28, Judiciary and Judicial Procedure.

§ 65. Government traffic; rates

(a) Notwithstanding any other provision of law, but subject to the provisions of sections 1(7) and 22 of the Interstate Commerce Act, as amended [49 U.S.C. 1(7) and 22], the full applicable commercial rates, fares, or charges shall be paid for transportation by any common carrier subject to such Act of any persons or property for the United States, or on its behalf, and the rate determined by the Interstate Commerce Commission as reasonable therefor shall be paid for the transportation by railroad of the United States mail: *Provided, however,* That any carrier by railroad and the United States may enter into contracts for the transportation of the United States mail for less than such rate: *Provided further,* That section 5 of title 41, shall not after September 18, 1940, be construed as requiring advertising for bids in connection with the procurement of transportation services when the services required can be procured from any common carrier lawfully operating in the territory where such services are to be performed.

(b) If any carrier by railroad furnishing such transportation, or any predecessor in interest, shall have received a grant of lands from the United States to aid in the construction of any part of the railroad operated by it, the provisions of law with respect to compensation for such transportation shall continue to apply to such transportation as though subsection (a) of this section had not been enacted until such carrier shall file with the Secretary of the Interior, in the form and manner prescribed by him, a release of any claim it may have against the United States to lands, interests in lands, compensation, or reimbursement on account of lands or interests in lands which have been granted, claimed to have been granted, or which it is claimed should have been granted to such carrier or any such predecessor in interest under any grant to such carrier or such predecessor in interest as aforesaid. Such release must be filed within one year from September 18, 1940. Nothing in this section shall be construed as requiring any such carrier to reconvey to the United States lands which have been heretofore patented or certified to it, or to prevent the issuance of patents confirming the title to such lands as the Secretary of the Interior shall find have been heretofore sold by any such carrier to an innocent purchaser for value or as preventing the issuance of patents to lands listed or selected by such carrier, which listing or selection has heretofore been fully and finally approved by the Secretary of the Interior to the extent that the issuance of such patents may be authorized by law.

(Sept. 18, 1940, ch. 722, title III, § 321, 54 Stat. 954; Dec. 12, 1945, ch. 573, § 1, 59 Stat. 606.)

REFERENCES IN TEXT

Such Act, referred to in subsec. (a), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, known as the Interstate Commerce Act, which is classified generally to chapters 1, 8, 12, 13, and 19 (§§ 1 et seq., 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

PRIOR PROVISIONS

Provisions formerly classified to this section, act Jan. 19, 1929, ch. 79, § 1, 45 Stat. 1084, are set out as section 60 of this title.

AMENDMENTS

1945—Subsec. (a). Act Dec. 12, 1945, struck out "except that the foregoing provisions shall not apply to the transportation of military or naval property of the United States moving for military or naval and not for civil use or to the transportation of members of the military or naval forces of the United States (or property of such members) when such members are

traveling on official duty;" following "or on its behalf".

EFFECTIVE DATE OF 1945 AMENDMENT

Section 2 of act Dec. 12, 1945, provided that: "The amendment made by section 1 of this Act [amending this section] shall take effect October 1, 1946: *Provided, however,* That any travel or transportation specifically contracted for prior to such effective date shall be paid for at the rate, fare, or charge in effect at the time of entering into such contract of carriage or shipment."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 65a of this title.

§ 65a. Readjustment of fares, rates, and charges to shippers

The Interstate Commerce Commission, in the exercise of its power to prescribe just and reasonable rates, fares, and charges, shall give due consideration to the increased revenues which carriers will receive as a result of the enactment of section 65 of this title, so that such increased revenues will be reflected in appropriate readjustments in rates, fares, and charges to shippers.

(Dec. 12, 1945, ch. 573, § 3, 59 Stat. 607.)

§ 66. Payment for transportation

(a) Deduction of overcharges

Payment for transportation of persons or property for or on behalf of the United States by any carrier or forwarder shall be made upon presentation of bills therefor prior to audit by the General Services Administration, or his designee. The right is reserved to the United States Government to deduct the amount of any overcharge by any carrier or forwarder from any amount subsequently found to be due such carrier or forwarder. This does not affect the authority of the General Accounting Office to make audits in accordance with the Budget and Accounting Act, 1921 [31 U.S.C. 1 et seq.], and the Accounting and Auditing Act of 1950 [31 U.S.C. 65 et seq.]. The term "overcharges" shall be deemed to mean charges for transportation services in excess of those applicable thereto under tariffs lawfully on file with the Interstate Commerce Commission, the Civil Aeronautics Board, the Federal Maritime Commission, and any State transportation regulatory agency, and charges in excess of those applicable thereto under rates, fares, and charges established pursuant to section 22 of this title, or other equivalent contract, arrangement, or exemption from regulation: *Provided, however,* That such deductions shall be made within three years (not including any time of war) from the time of payment of bills: *Provided further,* That every claim for charges for transportation within the purview of this section shall be forever barred unless such claim shall be received in the General Services Administration, or by his designee within three years (not including any time of war) from the date of (1) accrual of the cause of action thereon, or (2) payment of charges for the transportation involved, or (3) subsequent refund for overpayment of such charges, or (4) deduction made pursuant to this section, whichever is later.

(b) Review of action by General Services Administration; limitations

Nothing in subsection (a) of this section hereof shall be deemed to prevent any carrier or forwarder from requesting the Comptroller General to review the action on his claim by the General Services Administration, or his designee. Such request shall be forever barred unless received in the General Accounting Office within six months (not including in time of war) from the date the action was taken or within the periods of limitation specified in the second proviso in subsection (a) of this section, whichever is later.

(c) Advance payment

Pursuant to regulations prescribed by the head of a Government agency or his designee and in conformity with such standards as shall be promulgated jointly by the Secretary of the Treasury and the Comptroller General of the United States, bills for passenger or freight transportation services to be furnished the United States by any carrier or forwarder may be paid in advance of completion of the services, without regard to section 529 of title 31: *Provided,* That such carrier or forwarder has issued the usual ticket, receipt, bill of lading, or equivalent document covering the service involved, subject to later recovery by deduction or otherwise of any payments made for any services not received as ordered by the United States.

(d) Definition

The term "head of a Government agency" means any individual or group of individuals having final decisionmaking responsibility for any department, commission, board, service, Government corporation, instrumentality, or other establishment or body in the United States Government.

(Sept. 18, 1940, ch. 722, title III, § 322, 54 Stat. 955; Aug. 26, 1958, Pub. L. 85-762, § 2, 72 Stat. 860; Oct. 25, 1972, Pub. L. 92-550, § 1, 86 Stat. 1163; Jan. 2, 1975, Pub. L. 93-604, title III, § 201, 88 Stat. 1960.)

REFERENCES IN TEXT

The Budget and Accounting Act, 1921, referred to in subsec. (a), is act June 10, 1921, ch. 18, 42 Stat. 20, as amended, which is classified principally to chapter 1 (§ 1 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see section 1 of Title 31 and Tables volume.

The Accounting and Auditing Act of 1950, referred to in subsec. (a), is act Sept. 12, 1950, ch. 946, title I, part II, 64 Stat. 834, as amended, which is classified generally to chapter 1A (§ 65 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 65 of Title 31 and Tables volume.

CODIFICATION

Section was formerly classified to section 67 of this title.

PRIOR PROVISIONS

Provisions formerly classified to this section, act Sept. 18, 1940, ch. 722, title III, § 321, 54 Stat. 954, are set out as section 65 of this title.

AMENDMENTS

1975—Subsec. (a). Pub. L. 93-604, § 201(1), (2), transferred the preliminary transportation audit responsi-

bilities from the General Accounting Office to the General Services Administration, continued the final audit responsibility in the General Accounting Office, authorized the General Services Administration to designate other agencies to conduct such audits.

Subsec. (b). Pub. L. 93-604, § 201(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 93-604, § 201(3), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 93-604, § 201(3), redesignated subsec. (c) as (d).

1972—Subsec. (a). Pub. L. 92-550, § 1(a), designated existing provisions as subsec. (a) and, in subsec. (a) as so designated, substituted provisions for payment for transportation of persons or property for or on behalf of the United States by carriers or forwarders subject to standards promulgated by the Secretary of the Treasury and the Comptroller General of the United States for provisions for payment for transportation of United States mail, persons or property for or on behalf of the United States by common carriers subject to the Interstate Commerce Act and the Civil Aeronautics Act of 1938, and expanded the definition of "overcharges" to encompass all modes of transportation and all means of contractual arrangements or exemptions from regulations.

Subsecs. (b), (c). Pub. L. 92-550, § 1(b), added subsecs. (b) and (c).

1958—Pub. L. 85-762 substituted "overcharges by" for "overpayment to" and added sentence defining "overcharges".

Effective Date of 1958 Amendment

Section 3 of Pub. L. 85-762 provided in part that: "The provision of this Act which amends section 322 of the Transportation Act of 1940 [this section] shall apply only to transportation performed and payment made therefor subsequent to the effective date of this Act [August 26, 1958]."

Transfer of Records, Property, Personnel, and Funds to General Services Administration

Pub. L. 93-604, §§ 202, 203, Jan. 2, 1975, 88 Stat. 1960, 1961, authorized the transfer to the General Services Administration of such records, property, personnel, and funds of the General Accounting Office as the Comptroller General and the Director of the Office of Management and Budget determined were necessary incidental to the transfer of audit responsibilities from the General Accounting Office to the General Services Administration by section 201 of Pub. L. 93-604, provided for proper compensation of such transferred personnel, provided that such transfers were to take place no later than Sept. 30, 1976, and required, within six months of the date of such transfers, a report to Congress from the Administrator of General Services Administration concerning the transfers.

Cross References

Overpayment for transportation services, relief from liability of certifying officer, see section 142b of Title 2, The Congress, and section 82c of Title 31, Money and Finance.

Section Referred to in D.C. Code

This section is referred to in sections 1, 304a, 908, 1006a of this title; title 2 sections 142b, 142e; title 31 section 82c; title 44 section 308.

§ 67. Transferred

Codification

Section, act Sept. 18, 1940, ch. 722, title III, § 322, 54 Stat. 955, which related to payment for transportation of United States mail and persons or property on behalf of the United States, was transferred to section 66 of this title.

CHAPTER 3—TERMINATION OF FEDERAL CONTROL

§§ 71 to 79. Omitted

Codification

Sections 71 to 79 were omitted from the Code as obsolete. See below.

Section 71, act Feb. 28, 1920, ch. 91, § 2, 41 Stat. 457, related to definitions.

Section 72, act Feb. 28, 1920, ch. 91, § 202, 41 Stat. 457, related to the funds available.

Section 73, acts Feb. 28, 1920, ch. 91, § 204, 41 Stat. 460; Mar. 4, 1927, ch. 510, § 4, 44 Stat. 1450; Jan. 7, 1941, ch. 938, 54 Stat. 1226, related to reimbursement of deficits during Federal control.

Section 74, acts Feb. 28, 1920, ch. 91, § 206, 41 Stat. 461; Feb. 24, 1922, ch. 70, §§ 1, 2, 42 Stat. 393; Mar. 3, 1923, ch. 233, 42 Stat. 1443; Mar. 4, 1927, ch. 510, § 5, 44 Stat. 1450, related to causes of actions arising out of Federal control.

Section 75, act May 8, 1920, ch. 172, 41 Stat. 590, related to certificate of amounts due from carrier to President and deduction of amounts so certified.

Section 76, act Feb. 28, 1920, ch. 91, § 208(a), (b), 41 Stat. 464, related to continuance of existing rates.

Section 77, act Feb. 28, 1920, ch. 91, § 209, 41 Stat. 464, related to guaranty to carriers after termination of Federal control.

Section 78, act Feb. 28, 1920, ch. 91, § 211, 41 Stat. 464, related to execution of the powers by the President.

Section 79, act Feb. 28, 1920, ch. 91, § 212, as added Feb. 26, 1921, ch. 72, 41 Stat. 1145, related to further certificates and warrants.

§ 80. Transferred

Codification

Section, act Feb. 28, 1920, ch. 91, § 213, as added Aug. 13, 1940, ch. 666, 54 Stat. 788, which related to disposition of securities, was transferred to section 316 of Title 40, Public Buildings, Property, and Works.

CHAPTER 4—BILLS OF LADING

Sec.

81. Transportation included.
82. Straight bill of lading.
83. Order bill of lading; negotiability.
84. Order bills in parts or sets; liability of carrier.
85. Indorsement on duplicate bill; liability.
86. Indorsement on straight bill.
87. Effect of insertion of name of person to be notified.
88. Duty to deliver goods on demand; refusal.
89. Delivery; when justified.
90. Liability for delivery to person not entitled thereto.
91. Liability for delivery without cancellation of bill.
92. Liability in case of delivery of part of goods.
93. Alteration of bill.
94. Loss, etc., of bill; delivery of goods on order of court.
95. Liability on bill marked "duplicate."
96. Claim of title as excuse for refusal to deliver.
97. Interpleader of conflicting claimants.
98. Reasonable time for procedure allowed in case of adverse claim.
99. Failure to deliver; claim of third person as defense.
100. Loading by carrier; counting packages, etc.; contents of bill.
101. Loading by shipper; contents of bill; ascertainment of kind and quantity on request.
102. Liability for nonreceipt or misdescription of goods.
103. Attachment, etc., of goods delivered to carrier.
104. Remedies of creditor of owner of order bill.
105. Lien of carrier.
106. Liability after sale to satisfy lien, etc.

Sec.
107. Negotiation of order bill by delivery.
108. Negotiation of order bill by indorsement.
109. Transfer of bill by delivery; negotiation of straight bill.
110. Negotiation of order bill by person in possession.
111. Title and right acquired by transferee of order bill.
112. Rights of transferee of bill without negotiation; notice to carrier.
113. Compelling indorsement of order bill transferred by delivery.
114. Warranties arising out of transfer of bill.
115. Liability of indorser of bill.
116. Warranties by mortgagee, etc., receiving payment of bill.
117. Negotiation of bill; impairment of validity.
118. Negotiation of bill by seller, mortgagor, etc., to person without notice.
119. Rights of bona fide purchaser as affected by seller's lien or right of stoppage.
120. Rights of mortgagee or lien holder; limitation.
121. Offenses; penalty.
122. Terms defined.
123. Omitted.
124. Invalidity of part of chapter.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 46 section 1303.

§ 81. Transportation included

Bills of lading issued by any common carrier for the transportation of goods in any Territory of the United States, or the District of Columbia, or from a place in a State to a place in a foreign country, or from a place in one State to a place in another State, or from a place in one State to a place in the same State through another State or foreign country, shall be governed by this chapter.

(Aug. 29, 1916, ch. 415, § 1, 39 Stat. 538.)

EFFECTIVE DATE

Section 56 of act Aug. 29, 1916, provided that this chapter shall take effect on and after Jan. 1, 1917.

SHORT TITLE

Sections 81 to 124 of this title are popularly known as the "Pomerene Bills of Lading Act".

CROSS REFERENCES

Initial carrier's liability to holder of bill of lading, see section 20 of this title.

§ 82. Straight bill of lading

A bill in which it is stated that the goods are consigned or destined to a specified person is a straight bill.

(Aug. 29, 1916, ch. 415, § 2, 39 Stat. 539.)

§ 83. Order bill of lading; negotiability

A bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill is an order bill. Any provision in such a bill or in any notice, contract, rule, regulation, or tariff that it is nonnegotiable shall be null and void and shall not affect its negotiability within the meaning of this chapter unless upon its face and in writing agreed to by the shipper.

(Aug. 29, 1916, ch. 415, § 3, 39 Stat. 539.)

§ 84. Order bills in parts or sets; liability of carrier

Order bills issued in a State for the transportation of goods to any place in the United States on the Continent of North America, except Alaska and Panama, shall not be issued in parts or sets. If so issued, the carrier issuing them shall be liable for failure to deliver the goods described therein to anyone who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts: *Provided, however,* That nothing contained in this section shall be interpreted or construed to forbid the issuing of order bills in parts or sets for such transportation of goods to Alaska, Panama, Puerto Rico, Hawaii, or foreign countries, or to impose the liabilities set forth in this section for so doing.

(Aug. 29, 1916, ch. 415, § 4, 39 Stat. 539; May 17, 1932, ch. 190, 47 Stat. 158; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352.)

CODIFICATION

Words "the Philippine Islands" were omitted from text on authority of 1946 Proc. No. 2695, which granted independence to the Philippines, and which was issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, and under which section it is set out as a note.

CHANGE OF NAME

The name of "Porto Rico" was changed to "Puerto Rico" by act May 17, 1932.

ADMISSION OF ALASKA AND HAWAII TO STATEHOOD

Alaska was admitted into the Union on Jan. 3, 1959 upon the issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, and Hawaii was admitted into the Union on Aug. 21, 1959 upon the issuance of Proc. No. 3309, Aug. 21, 1959, 24 F.R. 6868, 73 Stat. c74. For Alaska Statehood Law, see Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For Hawaii Statehood Law, see Pub. L. 86-3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding section 491 of Title 48.

§ 85. Indorsement on duplicate bill; liability

When more than one order bill is issued in a State for the same goods to be transported to any place in the United States on the Continent of North America, except Alaska and Panama, the word "duplicate", or some other word or words indicating that the document is not an original bill, shall be placed plainly upon the face of every such bill except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to anyone who has purchased the bill for value in good faith as an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill: *Provided, however,* That nothing contained in this section shall in such case for such transportation of goods to Alaska, Panama, Puerto Rico, Hawaii, or foreign countries be interpreted or construed so as to require the placing of the word "duplicate" thereon, or to impose the liabilities set forth in this section for failure so to do.

(Aug. 29, 1916, ch. 415, § 5, 39 Stat. 539; May 17, 1932, ch. 190. 47 Stat. 158; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352.)

CODIFICATION

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§ 86. Indorsement on straight bill

A straight bill shall have placed plainly upon its face by the carrier issuing it "nonnegotiable" or "not negotiable." This section shall not apply, however, to memoranda or acknowledgments of an informal character.

(Aug. 29, 1916, ch. 415, § 6, 39 Stat. 539.)

§ 87. Effect of insertion of name of person to be notified

The insertion in an order bill of the name of a person to be notified of the arrival of the goods shall not limit the negotiability of the bill or constitute notice to a purchaser thereof of any rights or equities of such person in the goods.

(Aug. 29, 1916, ch. 415, § 7, 39 Stat. 539.)

§ 88. Duty to deliver goods on demand; refusal

A carrier, in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods or, if the bill is an order bill, by the holder thereof, if such a demand is accompanied by—

(a) An offer in good faith to satisfy the carrier's lawful lien upon the goods;

(b) Possession of the bill of lading and an offer in good faith to surrender, properly indorsed, the bill which was issued for the goods, if the bill is an order bill; and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods, in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure.

(Aug. 29, 1916, ch. 415, § 8, 39 Stat. 539.)

§ 89. Delivery; when justified

A carrier is justified, subject to the provisions of sections 90 to 92 of this title, in delivering goods to one who is—

(a) A person lawfully entitled to the possession of the goods, or

(b) The consignee named in a straight bill for the goods, or

(c) A person in possession of an order bill for the goods, by the terms of which the goods are deliverable to his order; or which has been indorsed to him, or in blank by the consignee, or by the mediate or immediate indorsee of the consignee.

(Aug. 29, 1916, ch. 415, § 9, 39 Stat. 540.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 90, 99 of this title.

§ 90. Liability for delivery to person not entitled thereto

Where a carrier delivers goods to one who is not lawfully entitled to the possession of them, the carrier shall be liable to anyone having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of section 89 of this title; and, though he delivered the goods as authorized by either of said subdivisions, he shall be so liable if prior to such delivery he—

(a) Had been requested, by or on behalf of a person having a right of property or possession in the goods, not to make such delivery, or

(b) Had information at the time of the delivery that it was to a person not lawfully entitled to the possession of the goods.

Such request or information, to be effective within the meaning of this section, must be given to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods.

(Aug. 29, 1916, ch. 415, § 10, 39 Stat. 540.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 89 of this title.

§ 91. Liability for delivery without cancellation of bill

Except as provided in section 106 of this title, and except when compelled by legal process, if a carrier delivers goods for which an order bill had been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to anyone who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier and notwithstanding delivery was made to the person entitled thereto.

(Aug. 29, 1916, ch. 415, § 11, 39 Stat. 540.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 89 of this title.

§ 92. Liability in case of delivery of part of goods

Except as provided in section 106 of this title, and except when compelled by legal process, if

a carrier delivers part of the goods for which an order bill had been issued and fails either—

(a) To take up and cancel the bill, or

(b) To place plainly upon it a statement that a portion of the goods has been delivered with a description which may be in general terms either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession, he shall be liable for failure to deliver all the goods specified in the bill to anyone who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto.

(Aug. 29, 1916, ch. 415, § 12, 39 Stat. 540.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 89 of this title.

§ 93. Alteration of bill

Any alteration, addition, or erasure in a bill after its issue without authority from the carrier issuing the same either in writing or noted on the bill, shall be void whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor.

(Aug. 29, 1916, ch. 415, § 13, 39 Stat. 540.)

§ 94. Loss, etc., of bill; delivery of goods on order of court

Where an order bill has been lost, stolen, or destroyed a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss, theft, or destruction and upon the giving of a bond, with sufficient surety, to be approved by the court, to protect the carrier or any person injured by such delivery from any liability or loss incurred by reason of the original bill remaining outstanding. The court may also in its discretion order the payment of the carrier's reasonable costs and counsel fees: *Provided,* A voluntary indemnifying bond without order of court shall be binding on the parties thereto.

The delivery of the goods under an order of the court, as provided in this section, shall not relieve the carrier from liability to a person to whom the order bill has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

(Aug. 29, 1916, ch. 415, § 14, 39 Stat. 540.)

§ 95. Liability on bill marked "duplicate"

A bill, upon the face of which the word "duplicate" or some other word or words indicating that the document is not an original bill is placed, plainly shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability.

(Aug. 29, 1916, ch. 415, § 15, 39 Stat. 541.)

§ 96. Claim of title as excuse for refusal to deliver

No title to goods or right to their possession asserted by a carrier for his own benefit shall excuse him from liability for refusing to deliver the goods according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien.

(Aug. 29, 1916, ch. 415, § 16, 39 Stat. 541.)

§ 97. Interpleader of conflicting claimants

If more than one person claim the title or possession of goods, the carrier may require all known claimants to interplead, either as a defense to an action brought against him for nondelivery of the goods or as an original suit, whichever is appropriate.

(Aug. 29, 1916, ch. 415, § 17, 39 Stat. 541.)

FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under Rule 22, see note by Advisory Committee under rule 22, Title 28, Appendix, Judiciary and Judicial Procedure.

Interpleader, see rule 22.

CROSS REFERENCES

Interpleader in federal district court, see sections 1335, 1397, and 2361 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 99 of this title.

§ 98. Reasonable time for procedure allowed in case of adverse claim

If someone other than the consignee or the person in possession of the bill has a claim to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods, either to the consignee or person in possession of the bill or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

(Aug. 29, 1916, ch. 415, § 18, 39 Stat. 541.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 99 of this title.

§ 99. Failure to deliver; claim of third person as defense

Except as provided in sections 89, 97, and 98 of this title, no right or title of a third person, unless enforced by legal process, shall be a defense to an action brought by the consignee of a straight bill or by the holder of an order bill against the carrier for failure to deliver the goods on demand.

(Aug. 29, 1916, ch. 415, § 19, 39 Stat. 541.)

§ 100. Loading by carrier; counting packages, etc.; contents of bill

When goods are loaded by a carrier, such carrier shall count the packages of goods if package freight, and ascertain the kind and quantity if bulk freight, and such carrier shall not, in such cases, insert in the bill of lading or in any notice, receipt, contract, rule, regulation, or tariff, "Shipper's weight, load, and count", or other words of like purport, indicating that the goods were loaded by the shipper and the description of them made by him, or in case of

bulk freight and freight not concealed by packages the description made by him. If so inserted contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein.

(Aug. 29, 1916, ch. 415, § 20, 39 Stat. 541.)

§ 101. Loading by shipper; contents of bill; ascertainment of kind and quantity on request

When package freight or bulk freight is loaded by a shipper and the goods are described in a bill of lading merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill of lading that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill of lading, such statements, if true, shall not make liable the carrier issuing the bill of lading, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may also by inserting in the bill of lading the words "Shipper's weight, load, and count", or other words of like purport, indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the nonreceipt or by the misdescription of the goods described in the bill of lading: *Provided, however,* Where the shipper of bulk freight installs and maintains adequate facilities for weighing such freight, and the same are available to the carrier, then the carrier, upon written request of such shipper and when given a reasonable opportunity so to do, shall ascertain the kind and quantity of bulk freight within a reasonable time after such written request, and the carriers shall not in such cases insert in the bill of lading the words "Shipper's weight", or other words of like purport, and if so inserted contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein.

(Aug. 29, 1916, ch. 415, § 21, 39 Stat. 541.)

§ 102. Liability for nonreceipt or misdescription of goods

If a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the receiving of goods and issuing bills of lading therefor for transportation in commerce among the several States and with foreign nations, the carrier shall be liable to (a) the owner of goods covered by a straight bill subject to existing right of stoppage in transitu or (b) the holder of an order bill, who has given value in good faith, relying upon the description therein of the goods, or upon the shipment being made upon the date therein shown, for damages caused by the nonreceipt by the carrier of all or part of the goods upon or prior to the date therein shown, or their failure to correspond with the description thereof in the bill at the time of its issue.

(Aug. 29, 1916, ch. 415, § 22, 39 Stat. 542; Mar. 4, 1927, ch. 510, § 6, 44 Stat. 1450.)

AMENDMENTS

1927—Act Mar. 4, 1927, inserted provisions relating to reliance upon date of shipment shown in bill.

§ 103. Attachment, etc., of goods delivered to carrier

If goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a purchaser for value in good faith would bind the owner, and an order bill is issued for them, they can not thereafter, while in the possession of the carrier, be attached by garnishment or otherwise or be levied upon under an execution unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court.

(Aug. 29, 1916, ch. 415, § 23, 39 Stat. 542.)

§ 104. Remedies of creditor of owner of order bill

A creditor whose debtor is the owner of an order bill shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such bill or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

(Aug. 29, 1916, ch. 415, § 24, 39 Stat. 542.)

§ 105. Lien of carrier

If an order bill is issued the carrier shall have a lien on the goods therein mentioned for all charges on those goods for freight, storage, demurrage and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill and all other charges incurred in transportation and delivery, unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier.

(Aug. 29, 1916, ch. 415, § 25, 39 Stat. 542.)

§ 106. Liability after sale to satisfy lien, etc.

After goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods themselves to the consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be an order bill.

(Aug. 29, 1916, ch. 415, § 26, 39 Stat. 542.)

CROSS REFERENCES

Liability for delivery without cancellation of bill, see sections 91 and 92 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 91, 92 of this title.

§ 107. Negotiation of order bill by delivery

An order bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank.

(Aug. 29, 1916, ch. 415, § 27, 39 Stat. 542.)

§ 108. Negotiation of order bill by indorsement

An order bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner.

(Aug. 29, 1916, ch. 415, § 28, 39 Stat. 543.)

§ 109. Transfer of bill by delivery; negotiation of straight bill

A bill may be transferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the bill or to the goods represented thereby. A straight bill can not be negotiated free from existing equities, and the indorsement of such a bill gives the transferee no additional right.

(Aug. 29, 1916, ch. 415, § 29, 39 Stat. 543.)

§ 110. Negotiation of order bill by person in possession

An order bill may be negotiated by any person in possession of the same, however such possession may have been acquired, if by the terms of the bill the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery.

(Aug. 29, 1916, ch. 415, § 30, 39 Stat. 543.)

§ 111. Title and right acquired by transferee of order bill

A person to whom an order bill has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value; and

(b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him.

(Aug. 29, 1916, ch. 415, § 31, 39 Stat. 543.)

§ 112. Rights of transferee of bill without negotiation; notice to carrier

A person to whom a bill has been transferred, but not negotiated, acquires thereby as against the transferor the title to the goods, subject to the terms of any agreement with the transferor. If the bill is a straight bill such person also acquires the right to notify the carrier of the transfer to him of such bill and thereby to become the direct obligee of whatever obligations the carrier owed to the transferor of the bill immediately before the notification.

Prior to the notification of the carrier by the transferor or transferee of a straight bill the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferor, or by a notification to the carrier by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a notification, has been notified; and no notification shall be effective until the officer or agent to whom it is given has had time, with the exercise of reasonable diligence, to communicate with the agent or agents having actual possession or control of the goods.

(Aug. 29, 1916, ch. 415, § 32, 39 Stat. 543.)

§ 113. Compelling indorsement of order bill transferred by delivery

Where an order bill is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the bill, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced.

(Aug. 29, 1916, ch. 415, § 33, 39 Stat. 543.)

§ 114. Warranties arising out of transfer of bill

A person who negotiates or transfers for value a bill by indorsement or delivery, unless a contrary intention appears, warrants—

(a) That the bill is genuine;

(b) That he has a legal right to transfer it;

(c) That he has knowledge of no fact which would impair the validity or worth of the bill;

(d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied if the contract of the parties had been to transfer without a bill the goods represented thereby.

(Aug. 29, 1916, ch. 415, § 34, 39 Stat. 543.)

§ 115. Liability of indorser of bill

The indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorsers of the bill to fulfill their respective obligations.

(Aug. 29, 1916, ch. 415, § 35, 39 Stat. 544.)

§ 116. Warranties by mortgagee, etc., receiving payment of bill

A mortgagee or pledgee or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not be deemed by so doing to represent or

warrant the genuineness of such bill or the quantity or quality of the goods therein described.

(Aug. 29, 1916, ch. 415, § 36, 39 Stat. 544.)

§ 117. Negotiation of bill; impairment of validity

The validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress, loss, theft, or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress, loss, theft, or conversion.

(Aug. 29, 1916, ch. 415, § 37, 39 Stat. 544.)

§ 118. Negotiation of bill by seller, mortgagor, etc., to person without notice

Where a person, having sold, mortgaged, or pledged goods which are in a carrier's possession and for which an order bill has been issued, or having sold, mortgaged, or pledged the order bill representing such goods, continues in possession of the order bill the subsequent negotiation thereof by that person under any sale, pledge, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation.

(Aug. 29, 1916, ch. 415, § 38, 39 Stat. 544.)

§ 119. Rights of bona fide purchaser as affected by seller's lien or right of stoppage

Where an order bill has been issued for goods no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transitu. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation.

(Aug. 29, 1916, ch. 415, § 39, 39 Stat. 544.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 120 of this title.

§ 120. Rights of mortgagee or lien holder; limitation

Except as provided in section 119 of this title, nothing in this chapter shall limit the rights and remedies of a mortgagee or lien holder whose mortgage or lien on goods would be valid, apart from this chapter, as against one who for value and in good faith purchased from the owner, immediately prior to the time of their delivery to the carrier, the goods which are subject to the mortgage or lien and obtained possession of them.

(Aug. 29, 1916, ch. 415 § 40, 39 Stat. 544.)

§ 121. Offenses; penalty

Any person who, knowingly or with intent to defraud, falsely makes, alters, forges, counterfeits, prints or photographs any bill of lading purporting to represent goods received for shipment among the several States or with foreign nations, or with like intent utters or publishes as true and genuine any such falsely altered, forged, counterfeited, falsely printed or photographed bill of lading, knowing it to be falsely altered, forged, counterfeited, falsely printed or photographed, or aids in making, altering, forging, counterfeiting, printing or photographing, or uttering or publishing the same, or issues or aids in issuing or procuring the issue of, or negotiates or transfers for value a bill which contains a false statement as to the receipt of the goods, or as to any other matter, or who, with intent to defraud, violates, or fails to comply with, or aids in any violation of, or failure to comply with any provision of this chapter, shall be guilty of a misdemeanor, and, upon conviction, shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding $5,000, or both.

(Aug. 29, 1916, ch. 415, § 41, 39 Stat. 544.)

CROSS REFERENCES

Felony as offense punishable by imprisonment for term exceeding one year, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 122. Terms defined

In this chapter, unless the context of subject matter otherwise requires—

"Action" includes counterclaim, set-off, and suit in equity.

"Bill" means bill of lading, governed by this chapter.

"Consignee" means the person named in the bill as the person to whom delivery of the goods is to be made.

"Consignor" means the person named in the bill as the person from whom the goods have been received for shipment.

"Goods" means merchandise or chattels in course of transportation or which have been or are about to be transported.

"Holder" of a bill means a person who has both actual possession of such bill and a right of property therein.

"Order" means an order by indorsement on the bill.

"Person" includes a corporation or partnership, or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee and to take as pledgee.

"State" includes any Territory, District, insular possession, or isthmian possession.

(Aug. 29, 1916, ch. 415, § 42, 39 Stat. 545.)

§ 123. Omitted

CODIFICATION

Section, act Aug. 29, 1916, ch. 415, § 43, 39 Stat. 545, which provided that provisions of this chapter should not apply to bills made and delivered prior to Jan. 1, 1917, was omitted from the Code as obsolete.

§ 124. Invalidity of part of chapter

The provisions and each part thereof and the sections and each part thereof of this chapter are independent and severable, and the declaring of any provision or part thereof, or provisions or part thereof, or section or part thereof, or sections or part thereof, unconstitutional shall not impair or render unconstitutional any other provision or part thereof or section or part thereof.

(Aug. 29, 1916, ch. 415, § 44, 39 Stat. 545.)

CHAPTER 5—INLAND WATERWAYS TRANSPORTATION

SUBCHAPTER I—GENERALLY

Sec.
141. Repealed.
142. Development of water transportation; duties of Secretary of Commerce.
143. Omitted.

SUBCHAPTER II—INLAND WATERWAYS CORPORATION

151 to 157. Repealed.

SUBCHAPTER I—GENERALLY

§ 141. Repealed. Pub. L. 88–67, § 1(2), July 19, 1963, 77 Stat. 81

Section, acts Feb. 28, 1920, ch. 91, § 201, 41 Stat. 458; Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1392; 1939 Reorg. Plan No. II, § 6, eff. July 1, 1939, 4 F.R. 2732, 53 Stat. 1434, provided for transfer of Government-owned boats, barges, etc., on inland waters, to Secretary of Commerce, payments after such transfer, construction of terminal facilities by Secretary of Commerce, transportation facilities on Mississippi River, application of other laws and employment of personnel.

§ 142. Development of water transportation; duties of Secretary of Commerce

It is declared to be the policy of Congress to promote, encourage, and develop water transportation, service, and facilities in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation.

It shall be the duty of the Secretary of Commerce, with the object of promoting, encouraging, and developing inland waterway transportation facilities in connection with the commerce of the United States, to investigate the appropriate types of boats suitable for different classes of such waterways; to investigate the subject of water terminals, both for inland waterway traffic and for through traffic by water and rail, including the necessary docks, warehouses, apparatus, equipment, and appliances in connection therewith, and also railroad spurs, and switches connecting with such terminals, with a view to devising the types most appropriate for different locations, and for the more expeditious and economical transfer or interchange of passengers or property between carriers by water and carriers by rail; to advise with communities, cities, and towns regarding the appropriate location of such terminals, and to cooperate with them in the preparation of plans for suitable terminal facilities; to investigate the existing status of water transportation upon the different inland waterways of the country, with a view to determining whether such waterways are being utilized to the extent of their capacity, and to what extent they are meeting the demands of traffic, and whether the water carriers utilizing such waterways are interchanging traffic with the railroads; and to investigate any other matter that may tend to promote and encourage inland water transportation. It shall also be the province and duty of the Secretary of Commerce to compile, publish, and distribute, from time to time, such useful statistics, data, and information concerning transportation on inland waterways as he may deem to be of value to the commercial interests of the country.

The words "inland waterway" as used in this section shall be construed to include the Great Lakes.

(Feb. 28, 1920, ch. 91, § 500, 41 Stat. 499; 1939 Reorg. Plan No. II, § 6, eff. July 1, 1939, 4 F.R. 2732, 53 Stat. 1434.)

TRANSFER OF FUNCTIONS

The Inland Waterways Corporation and all of its functions and obligations were transferred to the Department of Commerce, and all functions and duties of the Secretary of War with regard to the Corporation were transferred to the Secretary of Commerce by Reorg. Plan No. II of 1939, set out in the Appendix to Title 5, Government Organization and Employees.

§ 143. Omitted

CODIFICATION

Section, act Feb. 27, 1921, ch. 81, 41 Stat. 1149, which provided for discontinuance of authority of the Secretary of War to operate transportation facilities under section 141 of this title upon the New York State Barge Canal and for the sale of such facilities, was omitted from the Code as obsolete.

SUBCHAPTER II—INLAND WATERWAYS CORPORATION

§§ 151 to 157. Repealed. Pub. L. 88–67, § 1(1), July 19, 1963, 77 Stat. 81

Section 151, act June 3, 1924, ch. 243, § 1, 43 Stat. 360; 1939 Reorg. Plan No. II, § 6, eff. July 1, 1939, 4 F.R. 2732, 53 Stat. 1434, created the Inland Waterways Corporation, to be governed and directed by the Secretary of Commerce.

Section 152, acts June 3, 1924, ch. 243, § 2, 43 Stat. 360; May 29, 1928, ch. 891, § 1, 45 Stat. 978; 1939 Reorg. Plan No. II, § 6, eff. July 1, 1939, 4 F.R. 2732, 53 Stat. 1434, provided that the capital stock of the Inland Waterways Corporation be $15,000,000.

Section 153, acts June 3, 1924, ch. 243, § 3, 43 Stat. 361; May 29, 1928, ch. 891, § 2, 45 Stat. 978; June 16, 1934, ch. 545, 48 Stat. 968; Aug. 29, 1935, ch. 802, 49 Stat. 958; 1939 Reorg. Plan No. II, § 6, eff. July 1, 1939, 4 F.R. 2732, 53 Stat. 1434; Feb. 4, 1887, ch. 104, pt. III, § 320, as added Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 950, eff. Oct. 1, 1940, related to operation of transportation and terminal facilities and application of other laws.

Section 154, acts June 3, 1924, ch. 243, § 4, 43 Stat. 361; Feb. 28, 1927, ch. 229, 44 Stat. 1261; 1939 Reorg. Plan No. II, § 6, eff. July 1, 1939, 4 F.R. 2732, 53 Stat. 1434, related to appointment of an Advisory Board its membership, chairman, meetings and duties, and compensation of members.

Section 155, act June 3, 1924, ch. 243, § 5, 43 Stat. 362; 1939 Reorg. Plan No. II, § 6, eff. July 1, 1939, 4 F.R. 2732, 53 Stat. 1434, provided for the powers of the Inland Waterways Corporation.

Section 156, act June 3, 1924, ch. 243, § 6, 43 Stat. 362; 1939 Reorg. Plan No. II, § 6, eff. July 1, 1939, 4 F.R. 2732, 53 Stat. 1434, related to transfer of assets to

the Inland Waterways Corporation, assumption of rights, duties, liabilities, etc., by the Corporation, availability of money to the Corporation for expenditures, claims by or against the Corporation, adjustment of value and appraisal of assets transferred to Corporation and computation of limitations period.

Section 157, act June 3, 1924, ch. 243, § 7, as added June 19, 1937, ch. 368, 50 Stat. 304, and amended 1939 Reorg. Plan No. II § 6, eff. July 1, 1939, 4 F.R. 2732, 53 Stat. 1434, provided for the application of the services and operations of the Inland Waterways Corporation to the Savannah River.

INLAND WATERWAYS CORPORATION: LIQUIDATION; TRANSFER OF FUNCTIONS; DEPOSITS INTO TREASURY; MISCELLANEOUS TRANSFERS FOR LIQUIDATION OR ASSIGNMENT; ABATEMENT OF PROCEEDINGS

Pub. L. 88-67, § 2, July 19, 1963, 77 Stat. 81, provided that for liquidation of the affairs of the Inland Waterways Corporation, and for that purpose only, all functions, powers, and duties of the Corporation available or applicable on July 18, 1963, except requirements relating to service in contracts for sale of facilities of the Corporation deemed modified by section 1 of Pub. L. 88-67 (repealing sections 141 and 151 to 157 of this title), and all books, records, assets, and documents of the Corporation were transferred to the Secretary of Commerce with all rights, benefits, liabilities, and commitments of the Corporation assumed by the Secretary, in his official capacity, and with all future receipts and all remaining funds of the Corporation paid into the Treasury as miscellaneous receipts. In addition, suits or actions pending by or against the Corporation before July 19, 1963, were not abated by reason of Pub. L. 88-67 and any suit or action commenced after July 19, 1963, was to be commenced by or against the United States in a Federal court of competent jurisdiction.

CHAPTER 6—AIR COMMERCE

SUBCHAPTER I—AIR COMMERCE ACT OF 1926

Sec.
171 to 184. Repealed.

SUBCHAPTER II—SUPPLEMENTAL LEGISLATION

201. Repealed.

SUBCHAPTER III—PUBLIC AIRPORTS

211. Lease of contiguous public lands for public airports; authority of Secretary of the Interior.
212. Terms of lease; public lands for public airports.
213. Cancellation of leases of public lands used as airports made under law in force May 24, 1928.
214. Repealed.

SUBCHAPTER IV—INTERNATIONAL TECHNICAL COMMITTEE OF AERIAL LEGAL EXPERTS

231. Annual appropriation for expenses of participation by United States.

SUBCHAPTER V—NATIONAL ADVISORY COMMITTEE FOR AERONAUTICS

241. Transferred.
242 to 244. Repealed.
245. Transferred.
246. Omitted.

CROSS REFERENCES

Detail of members of Armed Forces for regulation and protection of air traffic, see section 1343 of this title.

SUBCHAPTER I—AIR COMMERCE ACT OF 1926

§ 171. Repealed. Pub. L. 85-726, title XIV, § 1401(a), Aug. 23, 1958, 72 Stat. 806

Section, act May 20, 1926, ch. 344, § 1, 44 Stat. 568, defined terms "air commerce" and "interstate or foreign air commerce". See section 1301 of this title.

EFFECTIVE DATE OF REPEAL

Section 1505(2) of Pub. L. 85-726, title XV, Aug. 23, 1958, 72 Stat. 810, provided that the repeal of this section shall be effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85-726 qualifies and takes office. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

§§ 172 to 173a. Repealed. June 23, 1938, ch. 601, § 1107(k), 52 Stat. 1029

Section 172, acts May 20, 1926, ch. 344, § 2, 44 Stat. 569; June 19, 1934, ch. 654, §§ 1, 2, 48 Stat. 1113, related to promotion of air commerce.

Section 173, acts May 20, 1926, ch. 344, § 3, 44 Stat. 569; Feb. 28, 1929, ch. 369, 45 Stat. 1404; June 19, 1934, ch. 654, §§ 3 to 7, 48 Stat. 1113, 1114, related to regulating powers of the Secretary of Commerce over aircraft. See sections 1401 to 1404 and 1421 to 1430 of this title.

Section 173a, act May 20, 1926, ch. 344, § 3a, as added June 19, 1934, ch. 654, § 8, 48 Stat. 1114, related to compliance with subpenas. See section 1484 of this title.

§§ 174 to 177. Repealed. Pub. L. 85-726, title XIV, § 1401(a), Aug. 23, 1958, 72 Stat. 806

Section 174, act May 20, 1926, ch. 344, § 4, 44 Stat. 570, authorized the President to set apart and protect airspace reservations in the United States for national defense or other governmental purposes.

Section 175, acts May 20, 1926, ch. 344, § 5(a) to (d), (f), 44 Stat. 570; June 19, 1934, ch. 654, § 9, 48 Stat. 1115; June 23, 1938, ch. 601, § 1107(i)(1), (2), (k), 52 Stat. 1028, 1029; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235; July 26, 1947, ch. 343, title II, § 205(a), 61 Stat. 501, related to availability of government facilities for public use, and to the sale of fuel and supplies; service and shelter. See section 1507 of this title.

Section 176, acts May 20, 1926, ch. 344, § 6, 44 Stat. 572; June 23, 1938, ch. 601, § 1107(i)(1), (3) to (5), 52 Stat. 1028; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, June 30, 1940, 5 F.R. 2421, 54 Stat. 1235; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; Aug. 8, 1953, ch. 379, 67 Stat. 489, related to foreign aircraft. See section 1508 of this title.

Section 177, acts May 20, 1926, ch. 344, § 7, 44 Stat. 572; 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F.R. 2223, 54 Stat. 1238; July 1, 1944, ch. 373, title VIII, § 813, 54 Stat. 714, renumbered Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049, and amended Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; July 30, 1956, ch. 779, § 3(b), 70 Stat. 721; 1946 Reorg. Plan No. 3, § 102, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1097; Aug. 5, 1950, ch. 591, § 1, 64 Stat. 414; Oct. 11, 1951, ch. 495, § 3, 65 Stat. 407; June 27, 1952, ch. 477, title IV, § 403(a)(26), 66 Stat. 279, related to application of existing laws relating to foreign commerce. See section 1509 of this title.

EFFECTIVE DATE OF REPEAL

Section 1505(2) of Pub. L. 85-726, title XV, Aug. 23, 1958, 72 Stat. 810, provided that the repeal of these sections shall be effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85-726 qualifies and takes office. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

§ 178. Repealed. June 23, 1938, ch. 601, § 1107(k), 52 Stat. 1029

Section, act May 20, 1926, ch. 344, § 8 (2d sentence), 44 Stat. 573, authorized the Secretary of Commerce to administer the provisions of the Air Commerce Act of 1926 (this subchapter) and for such purpose authorized the Secretary to make regulations and expenditures, to publish a bulletin, and to operate and acquire aircraft and air navigation facilities (except airports).

§§ 179 to 184. Repealed. Pub. L. 85-726, title XIV, § 1401(a), Aug. 23, 1958, 72 Stat. 806

Section 179, acts May 20, 1926, ch. 344, § 9, 44 Stat. 573; June 19, 1934, ch. 654, § 10, 48 Stat. 1115; June 23, 1938, ch. 601, § 1107(i)(1), (6), (7), 52 Stat. 1028; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, defined terms used in sections 171 to 184. See section 1301 of this title.

Section 180, acts May 20, 1926, ch. 344, § 10, 44 Stat. 574; June 23, 1938, ch. 601, § 1107(i)(1), (8), 52 Stat. 1028, defined the term "navigable airspace". See section 1301 of this title.

Section 181, acts May 20, 1926, ch. 344, § 11, 44 Stat. 574; June 19, 1934, ch. 654, §§ 11, 12, 48 Stat. 1115; June 19, 1934, ch. 656, § 2, 48 Stat. 1116; June 23, 1938, ch. 601, § 1107(i)(1), (9), (k), 52 Stat. 1028, 1029; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235; 1940 Reorg. Plan No. V, § 1, eff. June 15, 1940, 5 F.R. 2223, 54 Stat. 1238; July 1, 1944, ch. 373, title VIII, § 813, 58 Stat. 714, renumbered Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049, and amended Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; July 30, 1956, ch. 779, § 3(b), 70 Stat. 721; 1946 Reorg. Plan No. 3, § 102, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1097; Aug. 5, 1950, ch. 591, § 2, 64 Stat. 414, related to penalties for violations of sections 171 to 184 of this title. See sections 1472 and 1473 of this title.

Section 182, act May 20, 1926, ch. 344, § 12, 44 Stat. 575, related to separability of provisions.

Section 183, act May 20, 1926, ch. 344, § 13, 44 Stat. 576, related to the effective date of this subchapter.

Section 184, act May 20, 1926, ch. 344, § 14, 44 Stat. 576, provided that this subchapter may be cited as the "Air Commerce Act of 1926".

EFFECTIVE DATE OF REPEAL

Section 1505(2) of Pub. L. 85-726, title XV, Aug. 23, 1958, 72 Stat. 810, provided that the repeal of these sections shall be effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85-726 qualifies and takes office. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

SUBCHAPTER II—SUPPLEMENTAL LEGISLATION

§ 201. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section, act July 3, 1926, ch. 807, 44 Stat. 915, related to detail of Air Force officers to promote civil aviation.

SUBCHAPTER III—PUBLIC AIRPORTS

§ 211. Lease of contiguous public lands for public airports; authority of Secretary of the Interior

The Secretary of the Interior is authorized, in his discretion and under such regulations as he may prescribe, to lease for use as a public airport any contiguous public lands, unreserved and unappropriated, not to exceed two thousand five hundred and sixty acres in area, subject to valid rights in such lands under the public-land laws.

(May 24, 1928, ch. 728, § 1, 45 Stat. 728; Aug. 16, 1941, ch. 354, 55 Stat. 621.)

REFERENCES IN TEXT

The public-land laws, referred to in text, are classified generally to Title 43, Public Lands.

AMENDMENTS

1941—Act Aug. 16, 1941, increased area of land authorized for lease as airport from six hundred and forty acres to two thousand five hundred and sixty acres.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 212 of this title.

§ 212. Terms of lease; public lands for public airports

Any lease under section 211 of this title shall be for a period not to exceed twenty years, subject to renewal for like periods upon agreement of the Secretary of the Interior and the lessee. Any such lease shall be subject to the following conditions:

(a) That an annual rental of such sum as the Secretary of the Interior may fix for the use of the lands shall be paid to the United States.

(b) That the lessee shall maintain the lands in such condition, and provide for the furnishing of such facilities, service, fuel, and other supplies, as are necessary to make the lands available for public use as an airport of a rating which may be prescribed by the Administrator of the Federal Aviation Agency.

(c) That the lessee shall make reasonable regulations to govern the use of the airport, but such regulations shall take effect only upon approval by the Administrator of the Federal Aviation Agency.

(d) That all departments and agencies of the United States operating aircraft (1) shall have free and unrestricted use of the airport, and (2) with the approval of the Secretary of the Interior, shall have the right to erect and install therein such structures and improvements as the heads of such departments and agencies deem advisable, including facilities for maintaining supplies of fuel, oil, and other materials for operating aircraft.

(e) That whenever the President may deem it necessary for military purposes, the Secretary of the Army may assume full control of the airport.

(May 24, 1928, ch. 728, § 2, 45 Stat. 728; June 23, 1938, ch. 601, § 1107(b), 52 Stat. 1027; Aug. 23, 1958, Pub. L. 85-726, title XIV, §§ 1401(b), 1402(a), 72 Stat. 806.)

AMENDMENTS

1958—Pub. L. 85-726, § 1402(a), substituted "Administrator of the Federal Aviation Agency" for "Civil Aeronautics Authority" in subsecs. (b) and (c).

1938—Act June 23, 1938, changed the words "Secretary of Commerce" to read "Civil Aeronautics Authority".

CHANGE OF NAME

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3010 to 3013 continued the Department of the Army under the administrative supervision of a Secretary of the Army.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 1505(2) of Pub. L. 85-726, title XV, Aug. 23, 1958, 72 Stat. 811, provided that the amendment of this section by Pub. L. 85-726 shall be effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85-726 qualifies and takes office. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

REPEALS

Pub. L. 85-726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806, repealed act June 23, 1938, ch. 601, 1107(b), 52 Stat. 977, cited to the credit of this section.

TRANSFER OF FUNCTIONS

For transfer of certain real property and functions relating to real property, insofar as they pertain to the Air Force, from the Secretary of the Army and Department of the Army to the Secretary of the Air Force and Department of the Air Force, see Secretary of Defense Transfer Order No. 14 [§ 2(17)], eff. July 1, 1948.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 213 of this title.

§ 213. Cancellation of leases of public lands used as airports made under law in force May 24, 1928

With the consent of the lessee, the Secretary of the Interior is authorized to cancel any lease of public lands for use as public aviation fields or airports, made under law in force May 24, 1928, and to lease such lands to the lessee upon the conditions prescribed by section 212 of this title.

(May 24, 1928, ch. 728, § 3, 45 Stat. 729.)

§ 214. Repealed. Pub. L. 94-579, title VII, § 704(a), Oct. 21, 1976, 90 Stat. 2792

Section, act May 24, 1928, ch. 728, § 4, 45 Stat. 729, authorized the establishment of beacon lights and other air-navigation facilities on unreserved and unappropriated public lands.

EFFECTIVE DATE OF REPEAL

Section 704(a) of Pub. L. 94-579 provided in part that this section is repealed effective on and after Oct. 21, 1976.

SAVINGS PROVISIONS

Repeal by Pub. L. 94-579 not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see section 701 of Pub. L. 94-579, set out as a Savings Provisions note under section 1701 of Title 43, Public Lands.

SUBCHAPTER IV—INTERNATIONAL TECHNICAL COMMITTEE OF AERIAL LEGAL EXPERTS

§ 231. Annual appropriation for expenses of participation by United States

Not to exceed the sum of $6,500, or so much thereof as may be necessary, is authorized to be appropriated annually for the expenses of participation by the Government of the United States in the meetings of the International Technical Committee of Aerial Legal Experts and/or of the commissions established by that committee, including traveling expenses; personal services in the District of Columbia and elsewhere without reference to chapter 51 and subchapter III of chapter 53 of title 5; rent; purchase of necessary books and documents; printing and binding; official cards; entertainment; and such other expenses as may be authorized by the Secretary of State.

(Feb. 14, 1931, ch. 189, 46 Stat. 1162; Aug. 7, 1935, ch. 455, § 1, 49 Stat. 540; Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111; Oct. 28, 1949, ch. 782, title II, § 202(2), title XI, § 1106(a), 63 Stat. 954, 972.)

CODIFICATION

"Chapter 51 and subchapter III of chapter 53 of title 5" was substituted for the "Classification Act of 1949, as amended" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1949—Act Oct. 28, 1949, substituted the "Classification Act of 1949" for the "Classification Act of 1923".

1940—Act Oct. 10, 1940 deleted provision relating to stenographic and other services by contract.

1935—Act Aug. 7, 1935, amended section generally, and among other changes, increased annual appropriation from $250 to $6,500.

REPEALS

Section 2 of act Aug. 7, 1935, terminating appropriations of this section on June 30, 1941, was repealed by act June 11, 1940, ch. 306, 54 Stat. 263.

Act Oct. 28, 1949, ch. 782, 63 Stat. 954, 972, cited to the credit of this section, was repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

APPROPRIATIONS

Appropriations pursuant to this section were made in the following acts:

June 28, 1941, ch. 258, title I, 55 Stat. 272.
May 14, 1940, ch. 189, title I, 54 Stat. 188.
June 29, 1939, ch. 248, 53 Stat. 892.
Apr. 27, 1938, ch. 180, 52 Stat. 254.
June 16, 1937, ch. 359, 50 Stat. 267.
May 15, 1936, ch. 405, 49 Stat. 1316.
Apr. 7, 1934, ch. 104, 48 Stat. 534.
Mar. 1, 1933, ch. 144, 47 Stat. 1376.
July 1, 1932, ch. 361, 47 Stat. 486.

SUBCHAPTER V—NATIONAL ADVISORY COMMITTEE FOR AERONAUTICS

§ 241. Transferred

CODIFICATION

Section, acts Mar. 3, 1915, ch. 83, 38 Stat. 930; Mar. 2, 1929, ch. 482, 45 Stat. 1451; June 23, 1938, ch. 601, 1107(e), 52 Stat. 1027; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235; July 26, 1947, ch. 343, title II, § 205(a), 61 Stat. 501; May 25, 1948, ch. 335, § 1, 62 Stat. 266; Aug. 10, 1949, ch. 412, § 12(a), 63 Stat. 591; Aug. 8, 1950, ch. 645, § 4, 64 Stat. 419; June 3, 1954, ch. 254, 68 Stat. 170, which established a National Advisory Committee for Aeronautics, provided for its composition, prescribed the compensation of members and duties of the Committee, and required reports to the Congress, was transferred to section 151 of Title 50, War and National Defense, prior to the omission of section 151 of Title 50 pursuant to section 301(a) of Pub. L. 85-568, title III, July 29, 1958, 72 Stat. 432, set out as a note under section 2472 of Title 42, The Public Health and Welfare, which terminated the Committee and transferred all its functions, powers, duties, and obligations to the National Aeronautics and Space Administration. See now section 2451 et seq. of Title 42.

§§ 242 to 244. Repealed. May 25, 1948, ch. 335, § 3(a) to (c), 62 Stat. 267

Section 242, acts July 1, 1918, ch. 113, § 1, 40 Stat. 650; July 26, 1947, ch. 343, title II, § 205(a), 61 Stat. 501, related to office space for Advisory Committee.

Section 243, act Mar. 3, 1915, ch. 83, 38 Stat. 930, related to annual reports.

Section 244, act Apr. 22, 1926, ch. 171, § 1, 44 Stat. 314, related to the Langley Memorial Aeronautical Laboratory.

§ 245. Transferred

CODIFICATION

Section, acts Apr. 18, 1940, ch. 107, § 1, 54 Stat. 134; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972, which authorized the National Advisory Committee for Aeronautics to pay the compensation of a retired officer of the Army or Navy performing service for the Committee, was transferred to section 156 of Title 50, War and National Defense, prior to the omission of section 156 of Title 50 pursuant to section 301(a) of Pub. L. 85-568, title III, July 29, 1958, 72 Stat. 432, set out as a note under section 2472 of Title 42, The Public Health and Welfare, which terminated the Committee and transferred all its functions, powers, duties, and obligations to the National Aeronautics and Space Administration. See section 2451 et seq. of Title 42.

§ 246. Omitted

CODIFICATION

Section, act Sept. 6, 1950, ch. 896, ch. VIII, title I, § 101, 64 Stat. 711, which related to transfer of aircraft, supplies, and equipment by the Army and Navy, was omitted from the Code as not repeated in subsequent appropriation acts.

SIMILAR PROVISIONS

Similar provisions were contained in the following appropriations acts:

Aug. 24, 1949, ch. 506, title I, § 101, 63 Stat. 646.

Apr. 20, 1948, ch. 219, title I, § 101, 62 Stat. 188.

July 30, 1947, ch. 359, title I, § 101, 61 Stat. 600.

CHAPTER 7—COORDINATION OF INTERSTATE RAILROAD TRANSPORTATION

§§ 250, 251. Omitted

CODIFICATION

Section 250, act June 16, 1933, ch. 91, 48 Stat. 211, which provided that this chapter be cited as the "Emergency Railroad Transportation Act, 1933", was omitted from the Code as executed. See section 267a of this title.

Section 251, act June 16, 1933, ch. 91, title I, § 1, 48 Stat. 211, which related to definitions, was omitted from the Code as executed. See section 267a of this title.

§ 252. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 648

Section, act June 16, 1933, ch. 91, title I, § 2, 48 Stat. 211, provided for a Federal Coordinator of Transportation.

§§ 253 to 263. Omitted

CODIFICATION

Sections 253 to 263 were omitted from the Code as executed. See section 267a of this title.

Section 253, act June 16, 1933, ch. 91, title I, § 3, 48 Stat. 212, related to the division of railroads into geographical groups and regional coordinating committees.

Section 254, act June 16, 1933, ch. 91, title I, § 4, 48 Stat. 212, described the purpose of this chapter.

Section 255, act June 16, 1933, ch. 91, title I, § 5, 48 Stat. 213, related to the duties of the regional coordinating committees.

Section 256, act June 16, 1933, ch. 91, title I, § 6, 48 Stat. 213, related to cooperation between the Coordinator and committees.

Section 257, act June 16, 1933, ch. 91, title I, § 7, 48 Stat. 213, related to the establishment and functions of labor committees and regional board of adjustment.

Section 258, act June 16, 1933, ch. 91, title I, § 8, 48 Stat. 214, related to publication of orders of the Coordinator and to the effectiveness of these orders.

Section 259, act June 16, 1933, ch. 91, title I, § 9, 48 Stat. 214, related to review of the orders of the coordinator by the Commission.

Section 260, act June 16, 1933, ch. 91, title I, § 10, 48 Stat. 215, related to exemption from the antitrust laws.

Section 261, act June 16, 1933, ch. 91, title I, § 11, 48 Stat. 215, provided that contracts regarding location and maintenance of offices not be affected by any provision of this chapter.

Section 262, act June 16, 1933, ch. 91, title I, § 12, 48 Stat. 215, related to the penalty for failure or refusal to comply with orders of the Coordinator or Commission.

Section 263, act June 16, 1933, ch. 91, title I, § 13, 48 Stat. 216; which provided that the Coordinator investigate and consider means of improving transportation conditions throughout the country and report his recommendations to the Commission.

§ 264. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 648

Section, acts June 16, 1933, ch. 91, title I, § 14, 48 Stat. 216, June 13, 1934, ch. 498, 48 Stat. 954, provided for the payment of the expenses of the Federal Coordinator of Transportation.

§§ 264a to 268. Omitted

CODIFICATION

Sections 264a to 268 were omitted from the Code as executed. See section 267a of this title.

Section 264a, act June 14, 1935, ch. 247, § 2, 49 Stat. 376, related to additional assessment on carriers.

Section 265, act June 16, 1933, ch. 91, title I, § 15, 48 Stat. 216, related to approval of loans to carriers in need of financial reorganization.

Section 266, act June 16, 1933, ch. 91, title I, § 16, 48 Stat. 216, related to court review of final orders.

Section 267, act June 16, 1933, ch. 91, title I, § 17, 48 Stat. 217, provided that this chapter cease to have effect at the end of one year after June 16, 1933.

Section 267a, act June 14, 1935, ch. 247, § 1, 49 Stat. 376, which extended the duration of this chapter until June 17, 1936, was omitted from the Code pursuant to its own terms.

Section 268, act June 16, 1933, ch. 91, title II, § 209, 48 Stat. 221, related to separability of provisions of this chapter.

INTERSTATE COMMERCE COMMISSION COMMUNICATION DATED AUGUST 11, 1939

A communication from the office of the Interstate Commerce Commission dated Aug. 11, 1939, stated that "the office of Federal Coordinator of Transportation no longer exists and the staff of employees has been completely liquidated * * * and no business is being conducted under the Emergency Railroad Transportation Act, 1933."

CHAPTER 8—INTERSTATE COMMERCE ACT, PART II; MOTOR CARRIERS

Sec.

301. Short title.

302. Application of provisions.

(a) Transportation of passengers and property; facilities.

Sec.
(b) Taxation powers of States; State certificate of public convenience and necessity.
(c) Transportation by railroad, water-carrier, express company, or freight forwarder; performance within terminal areas.
303. Definitions and exceptions.
(a) Definitions.
(b) Vehicles excepted from operation of law.
(c) Certificate or permit; transportation within scope, and in furtherance, of primary business enterprise.
304. Powers and duties of Commission.
(a) Powers and duties generally.
(b) Classification of motor carriers.
(c) Investigation of complaints; orders.
(d) Application of sections 14 and 16 (13) of this title.
(e) Regulations governing use of vehicles owned by others.
(f) Exceptions to regulations for use of vehicles owned by others.
304a. Actions for recovery of charges; limitation of actions; definition; effective date; actions by or against United States.
305. Administration.
(a) Joint boards; composition; references of matters to boards.
(b) Creation of joint board; rules and procedure; nominations for membership; procedure on failure of board to act.
(c) Place of holding hearings.
(d) Oaths; attendance of witnesses and production of documents.
(e) Notice of proceedings and opportunity for hearing.
(f) Joint hearings with State authorities; offices for boards and State commissions.
(g) Court review of Commission's orders; compelling Commission to take jurisdiction.
(h) Application of section 17 of this title.
(i) Pecuniary interest in motor carrier under investigation forbidden.
(j) Employees, examiners, attorneys, etc.; authority to employ.
305a. Joint Board, transportation requests.
306. Certificate of convenience and necessity.
(a) Necessity for; carriers in bona fide operation on June 1, 1935; traffic moving to and from Territories and possessions; "grandfather" provisions.
(b) Application for certificate; form and contents.
307. Issuance of certificate.
(a) Issuance authorized to qualified applicants for regular routes and between fixed termini.
(b) Certificate not to confer proprietary or property rights in highway.
308. Terms and conditions of certificate.
(a) Specification of routes and termini; extension of routes; restriction on additions to equipment.
(b) Deviation from route.
(c) Transportation of special or chartered parties; date of filing or reissuance of certificate.
(d) Transportation of baggage, newspapers, express, or mail.
Sec.
309. Contract carriers by motor vehicle.
(a) Permit to operate; carriers in bona fide operation on July 1, 1935; laws relating to national parks and monuments unaffected; traffic moving to and from Territories and possessions; "grandfather" provisions.
(b) Application for permit; form and contents; issuance of permit; terms and conditions.
310. Dual operations.
310a. Temporary authority.
(a) Immediate and urgent need; time limitation.
(b) Consolidation and merger; time limitation.
(c) Applicability of provisions of this chapter; rules and regulations of Commission.
311. Motor transportation brokers.
(a) License required.
(b) Issuance of license; brokers in operation prior to enactment of section.
(c) Rules and regulations; bond or other security required.
(d) Inspection of accounts, records, etc.
312. Suspension, revocation, or change in certificates, permits, and licenses.
(a) Wilful failure to comply; notice and hearing.
(b) Transfer.
(c) Issuance of certificate of public convenience and necessity in lieu of permit.
313. Validity and perfection of certain security interests in motor vehicles.
(a) Definitions.
(b) Indication on certificate of title of interest.
(c) Certificate of title not issued; public filing or recording.
(d) Certificate of title not issued; no public filing or recording.
(e) Interest perfected prior to January 1, 1959.
314. Issuance of securities.
315. Security for protection of public.
316. Rates, fares and charges.
(a) Duty to establish reasonable rates, etc.; service and equipment; rules and regulations; reasonable divisions of joint fares.
(b) Rates, facilities for carriers of property.
(c) Through routes and joint rates; "common carriers by water".
(d) Undue preferences or prejudices prohibited.
(e) Complaints to and investigation by Commission; power of Commission to fix reasonable rates, regulations, etc.
(f) Commission empowered to establish just division of joint rates.
(g) New rates; determination of fairness by Commission; suspension.
(h) Good will, earning power or certificate inadmissible in proceedings to determine rates.
(i) Transportation needs and fair return considered in determining rates, etc.
(j) Effect on remedy or right of action.
317. Tariffs of common carriers by motor vehicle.
(a) Filing, posting, and publication.
(b) Deviation from rates and regulations enumerated in tariff forbidden; undue preferences.
(c) Change in tariffs; filing and posting notice; powers of Commission.

Sec.
(d) Transportation without filing tariff forbidden.
318. Schedules of contract carriers by motor vehicle.
(a) Establishment, filing, and publication of schedules and rules affecting rates; notice of and hearing on proposed changes; undue preferences.
(b) Complaints and investigations; hearings and orders of Commission.
(c) New or reduced charges; hearings and orders of Commission; suspension.
319. Application of section 20(11) and (12) of this title to common carriers by motor vehicle.
320. Accounts, records and reports.
(a) Reports to Commission; copies of contracts; publication of information.
(b) Period covered by report; time of filing; oath.
(c) Depreciation charges.
(d) Accounts, records, etc., form; period of preservation; access to by Commission or agents.
(e) Definitions.
(f) Report of accident as evidence in damage suit.
(g) Inspection, examination, and copying of accounts, books, records, etc.; form of accounts, records, and memorandums.
321. Orders, notices and service of process.
(a) Persons upon whom notice or orders served; manner and time of service.
(b) Effective date and duration of orders of Commission.
(c) Designation of agent for service of process.
(d) "Motor carriers" as including brokers.
322. Unlawful operation.
(a) Violation of chapter or rules or orders; penalty where none otherwise provided.
(b) Jurisdiction of district courts to restrain violations and enforce orders.
(c) Participation in unjust discrimination; evasion of regulations; penalty.
(d) Disclosure of information by agent, accountant, or examiner; penalty.
(e) Disclosure or solicitation of information concerning property in transportation.
(f) Giving information in response to legal process, or to government officers or to other carriers for adjustment of rates permitted.
(g) Failure or refusal to make reports or keep accounts and records; altering or making false report or record; penalty.
(h) Civil action for fines; amount; service of process; payment of costs and expenses.
323. Collection of rates and charges; extension of credit; liability of agent of beneficial owner.
324. Identification plates for interstate motor carriers.
324a. Allowances to shippers for transportation services.
325. Investigation of motor vehicle sizes and weights and qualifications and hours of service of employees.
325a. State or subdivision income tax withholding on compensation paid to interstate motor vehicle employees.
(a) Withholding where employee earns more than 50 per centum of compensation paid by carrier to him or where employee resides; filing of information return by carrier.
Sec.
(b) State or subdivision where employee deemed to have earned more than 50 per centum of compensation.
(c) Definitions.
326. Separability of provisions.
327. Effective date of chapter.

National Transportation Policy

Act Sept. 18, 1940, ch. 722, title I, § 1, 54 Stat. 899, amended the Interstate Commerce Act [chapters 1, 8, 12, 13, and 19 of this title] by inserting before part I thereof (chapter 1 of this title) the following provision entitled "National Transportation Policy": "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this act [chapters 1, 8, 12, 13 and 19 of this title], so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this act [chapters 1, 8, 12, 13, and 19 of this title], shall be administered and enforced with a view to carrying out the above declaration of policy."

Interstate Commerce Act

The Interstate Commerce Act of Feb. 4, 1887, ch. 104, 24 Stat. 379, as it existed prior to its division into parts, is embodied in chapter 1 (§ 1 et seq.) of this title. The original act was designated "part I" and a new part II, comprising this chapter (§ 301 et seq.) was added by act Aug. 9, 1935, ch. 498, 49 Stat. 543. Part III, constituting chapter 12 (§ 901 et seq.) of this title, was added by act Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 929. Part IV, constituting chapter 13 (§ 1001 et seq.) of this title, was added by act May 16, 1942, ch. 318, § 1, 56 Stat. 284. Part V, constituting chapter 19 (§ 1231 et seq.) of this title, was added by Pub. L. 85-625, § 2, Aug. 12, 1958, 72 Stat. 568.

Cross References

Appeals to Supreme Court, see section 45 of this title.

Combinations and consolidations of carriers, prohibitions, see section 5 of this title.

Commission procedure; delegation of duties; rehearings; application to proceedings under this chapter, see section 305 of this title.

Exchange of telephone, telegraph, or cable services, see section 1 of this title.

Expedition of actions by United States under this chapter involving general public importance, see section 44 of this title.

Intervention of representatives of employees, see section 17 of this title.

Reference of administrative matters to examiners, see section 17 of this title.

Chapter Referred to in Other Sections

This chapter is referred to in sections 5, 5b, 17, 902, 903, 1002, 1007, 1009, 1010, 1011, 1013, 1671 of this title; title 15 sections 1401, 1990d; title 29 section 186; title 45 section 771.

Chapter Referred to in D.C. Code

This chapter is referred to in section 40-434 of the District of Columbia Code.

§ 301. Short title

This chapter may be cited as part II of the Interstate Commerce Act.

(Feb. 4, 1887, ch. 104, pt. II, § 201, as added Aug. 9, 1935, ch. 498, 49 Stat. 543, and amended Sept. 18, 1940, ch. 722, title I, § 15, 54 Stat. 919.)

AMENDMENTS

1940—Act Aug. 9, 1935, added section to the original Interstate Commerce Act, act Feb. 4, 1887, ch. 104, and provided that this chapter might be cited as the "Motor Carrier Act, 1935". Act Sept. 18, 1940, which added chapter 12 of this title as "part III of the Interstate Commerce Act," changed "Motor Carrier Act, 1935" to "part II of the Interstate Commerce Act".

SHORT TITLE OF INTERSTATE COMMERCE ACT

For Short Title of Interstate Commerce Act, see Short Title note set out preceding section 1 of this title.

§ 302. Application of provisions

(a) Transportation of passengers and property; facilities

The provisions of this chapter apply to the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce and to the procurement of and the provisions of facilities for such transportation, and the regulation of such transportation, and of the procurement thereof, and the provision of facilities therefor, is vested in the Interstate Commerce Commission.

(b) Taxation powers of States; State certificate of public convenience and necessity

(1) Nothing in this chapter, except as provided in section 325a of this title, shall be construed to affect the powers of taxation of the several States or to authorize a motor carrier to do an intrastate business on the highways of any State, or to interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof.

(2) The requirement by a State that any motor carrier operating in interstate or foreign commerce within the border of that State register its certificate of public convenience and necessity or permit issued by the Commission shall not constitute an undue burden on interstate commerce provided that such registration is accomplished in accordance with standards, or amendments thereto, determined and officially certified to the Commission by the national organization of the State commissions, as referred to in section 305(f) of this title, and promulgated by the Commission. As so certified, such standards, or amendments thereto, shall be promulgated forthwith by the Commission and shall become effective five years from the date of such promulgation: *Provided*, That (1) any amendments of such standards, which are determined by the national organization of the State commissions and promulgated by the Commission prior to the initial effective date of such standards shall become effective on such initial effective date; and (2) after such standards become effective initially, any amendments of such standards, which are subsequently determined by the national organization of the State commissions, shall become effective at the time of promulgation or at such other time, subsequent to promulgation by the Commission, as may be determined by such organization. As used in this paragraph, "standards or amendments thereto" shall mean specification of forms and procedures required to evidence the lawfulness of interstate operations of a carrier within a State by (a) filing and maintaining current records of the certificates and permits issued by the Commission, (b) registering and identifying vehicles as operating under such certificates and permits, (c) filing and maintaining evidence of currently effective insurance or qualifications as a self-insurer under rules and regulations of the Commission, and (d) filing designations of local agents for service of process. Different standards may be determined and promulgated for each of the classes of carriers as differences in their operations may warrant. In determining or amending such standards, the national organization of the State commissions shall consult with the Commission and with representatives of motor carriers subject to State registration requirements. To the extent that any State requirements for registration of motor carrier certificates or permits issued by the Commission impose obligations which are in excess of the standards or amendments thereto promulgated under this paragraph, such excessive requirements shall, on the effective date of such standards, constitute an undue burden on interstate commerce. If the national organization of the State commissions fails to determine and certify to the Commission such standards within eighteen months from September 6, 1965, or if that organization at any time determines to withdraw in their entirety standards previously determined or promulgated, it shall be the duty of the Commission, within one year thereafter, to devise and promulgate such standards, and to review from time to time the standards so established and make such amendments thereto as it may deem necessary, in accordance with the foregoing requirements of this paragraph. Nothing in this paragraph shall be construed to deprive the Commission, when there is a reasonable question of interpretation or construction, of its jurisdiction to interpret or construe certificates of public convenience and necessity, permits, or rules and regulations issued by the Commission, nor to authorize promulgation of standards in conflict with any rule or regulation of the Commission.

(c) Transportation by railroad, water-carrier, express company, or freight forwarder; performance within terminal areas

Notwithstanding any provision of this section or of section 303 of this title, the provisions of this chapter, except the provisions of section 304 of this title relative to qualifications and maximum hours of service of employees and safety of operation and equipment, shall not apply—

(1) to transportation by motor vehicle by a carrier by railroad subject to chapter 1 of this title, or by a water carrier subject to chapter 12 of this title, or by a freight forwarder subject to chapter 13 of this title, incidental to transportation or service subject to such chapters, in the performance within terminal areas of transfer, collection, or delivery services; but such transportation shall be consid-

ered to be and shall be regulated as transportation subject to chapter 1 of this title when performed by such carrier by railroad, as transportation subject to chapter 12 of this title, when performed by such water carrier, and as transportation or service subject to chapter 13 of this title when performed by such freight forwarder;

(2) to transportation by motor vehicle by any person (whether as agent or under a contractual arrangement) for a common carrier by railroad subject to chapter 1 of this title, an express company subject to chapter 1 of this title, a motor carrier subject to this chapter, a water-carrier subject to chapter 12 of this title, or a freight forwarder subject to chapter 13 of this title, in the performance within terminal areas of transfer, collection, or delivery service; but such transportation shall be considered to be performed by such carrier, express company, or freight forwarder as part of, and shall be regulated in the same manner as, the transportation by railroad, express, motor vehicle, or water, or the freight forwarder transportation or service, to which such services are incidental.

(Feb. 4, 1887, ch. 104, pt. II, § 202, as added Aug. 9, 1935, ch. 498, 49 Stat. 543, and amended Sept. 18, 1940, ch. 722, title I, § 17, 54 Stat. 920; May 16, 1942, ch. 318, § 2, 56 Stat. 300; Sept. 6, 1965, Pub. L. 89-170, § 2, 79 Stat. 648; Dec. 23, 1970, Pub. L. 91-569, § 2(a), 84 Stat. 1500; Oct. 28, 1974, Pub. L. 93-496, § 14, 88 Stat. 1532.)

AMENDMENTS

1974—Subsec. (b)(2). Pub. L. 93-496 added proviso relating to the effective date of any amendments of standards promulgated prior to and after the initial effective date of such standards.

1970—Subsec. (b)(1). Pub. L. 91-569 added, "except as provided in section 325a of this title," following "Nothing in this chapter".

1965—Subsec. (b). Pub. L. 89-170 designated existing provisions as par. (1) and added par. (2).

1942—Subsec. (c). Act May 16, 1942, amended subsec. (c) generally, and among other changes, inserted exception in opening paragraph, and provisions relating to freight forwarders subject to chapter 13 of this title in pars. (1) and (2). Former subsec. (c) is now subsec. (b).

1940—Subsec. (a). Act Sept. 18, 1940, § 17(a), redesignated former subsec. (b) as (a). Former subsec. (a), relating to declaration of policy, was repealed by act Sept. 18, 1940, § 17(a). For National transportation policy, see note preceding section 301 of this title.

Subsec. (b). Act Sept. 18, 1940, § 17(a), redesignated former subsec. (c) as (b). Former subsec. (b) is now subsec. (a).

Subsec. (c). Act Sept. 18, 1940, § 17(b), added subsec. (c), and redesignated former subsection (c) to be "(b)".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-569 effective January 1, 1971, see section 5 of Pub. L. 91-569, set out as an effective date note under section 26a of this title.

CROSS REFERENCES

Other exceptions to application of this chapter, see section 303 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26c, 303, 1010 of this title; title 47 section 410.

§ 303. Definitions and exceptions

(a) Definitions

As used in this chapter—

(1) The term "person" means any individual, firm, copartnership, corporation, company, association, or joint-stock association; and includes any trustee, receiver, assignee, or personal representative thereof.

(2) The term "board" or "State board" means the commission, board, or official (by whatever name designated in the laws of a State) which, under the laws of any State in which any part of the service in interstate or foreign commerce regulated by this chapter is performed, has or may hereafter have jurisdiction to grant or approve certificates of public convenience and necessity or permits to motor carriers, or otherwise to regulate the business of transportation by motor vehicles, in intrastate commerce over the highways of such State.

(3) The term "Commission" means the Interstate Commerce Commission.

(4) The term "joint board" means any special board constituted as provided in section 305 of this title.

(5) The term "certificate" means a certificate of public convenience and necessity issued under this chapter to common carriers by motor vehicle.

(6) The term "permit" means a permit issued under this chapter to contract carriers by motor vehicle.

(7) The term "license" means a license issued under this chapter to a broker.

(8) The term "State" means any of the several States or the District of Columbia; and the term "United States" means the several States and the District of Columbia.

(9) The term "express company" means any common carrier by express subject to the provisions of chapter 1 of this title.

(10) The term "interstate commerce" means commerce between any place in a State and any place in another State or between places in the same State through another State, whether such commerce moves wholly by motor vehicle or partly by motor vehicle and partly by rail, express, or water: *Provided*, That to the extent that such transportation in "interstate commerce" between points in Alaska and points in other States is performed within a foreign country, the application of this chapter shall not include any requirement as to conduct in such foreign country which is in conflict with a requirement of such foreign country, but shall include as a condition to engaging in such operations within the jurisdiction of the United States, the observance, as to the entire service, of the requirements of this chapter with respect to rates, fares, charges, and practices pertaining to such transportation.

(11) The term "foreign commerce" means commerce, whether such commerce moves wholly by motor vehicle or partly by motor vehicle and partly by rail, express, or water, (A) between any place in the United States and any place in a foreign country, or between places in the United States through a foreign country; or (B) between any place in the United States and any place in a Terri-

tory or possession of the United States insofar as such transportation takes place within the United States. The term "foreign commerce" also includes transportation between places in a foreign country, or between a place in one foreign country and a place in another foreign country, insofar as such transportation takes place within the United States, but only for purposes of the application, to carriers engaged in such transportation, of the following provisions of this chapter: section 315 of this title (which relates to insurance for the protection of the public), section 321 of this title (which relates to designation of an agent for service of process), and those provisions of section 304 of this title which relate to qualifications and maximum hours of service of employees and safety of operation and equipment.

(12) The term "highway" means the roads, highways, streets, and ways in any State.

(13) The term "motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof determined by the Commission, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.

(14) The term "common carrier by motor vehicle" means any person which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, whether over regular or irregular routes, except transportation by motor vehicle by an express company to the extent that such transportation has heretofore been subject to chapter 1 of this title, to which extent such transportation shall continue to be considered to be and shall be regulated as transportation subject to chapter 1 of this title.

(15) The term "contract carrier by motor vehicle" means any person which engages in transportation by motor vehicle of passengers or property in interstate or foreign commerce, for compensation (other than transportation referred to in paragraph (14) of this subsection and the exception therein), under continuing contracts with one person or a limited number of persons either (a) for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served or (b) for the furnishing of transportation services designed to meet the distinct need of each individual customer.

(16) The term "motor carrier" includes both a common carrier by motor vehicle and a contract carrier by motor vehicle.

(17) The term "private carrier of property by motor vehicle" means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle", who or which transports in interstate or foreign commerce by motor vehicle property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or in furtherance of any commercial enterprise.

(18) The term "broker" means any person not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, who or which, as principal or agent, sells or offers for sale any transportation subject to this chapter, or negotiates for, or holds himself or itself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts, or arranges for such transportation.

(19) The "services" and "transportation" to which this chapter applies include all vehicles operated by, for, or in the interest of any motor carrier irrespective of ownership or of contract, express or implied, together with all facilities and property operated or controlled by any such carrier or carriers, and used in the transportation of passengers or property in interstate or foreign commerce or in the performance of any service in connection therewith.

(20) The term "interstate operation" means any operation in interstate commerce.

(21) The term "foreign operation" means any operation in foreign commerce.

(22) The term "carrier of migrant workers by motor vehicle" means any person, including any "contract carrier by motor vehicle", but not including any "common carrier by motor vehicle", who or which transports in interstate or foreign commerce at any one time three or more migrant workers to or from their employment by any motor vehicle other than a passenger automobile or station wagon, except migrant workers transporting themselves or their immediate families.

(23) The term "migrant worker" means any individual proceeding to or returning from employment in agriculture as defined in section 203(f) of title 29, or section 3121(g) of title 26.

(b) Vehicles excepted from operation of law

Nothing in this chapter, except the provisions of section 304 of this title relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include (1) motor vehicles employed solely in transporting school children and teachers to or from school; or (2) taxicabs, or other motor vehicles performing a bona fide taxicab service, having a capacity of not more than six passengers and not operated on a regular route or between fixed termini; or (3) motor vehicles owned or operated by or on behalf of hotels and used exclusively for the transportation of hotel patrons between hotels and local railroad or other common carrier stations; or (4) motor vehicles operated, under authorization, regulation, and control of the Secretary of the Interior, principally for the purpose of transporting persons in and about the national parks and national monuments; or (4a) motor vehicles controlled and operated by any farmer when used in the transportation of his agricultural (including horticultural) commodities and products thereof, or in the transportation of supplies to his farm; or (5) motor vehicles controlled and oper-

ated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended [12 U.S.C. 1141 et seq.], or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined, but any interstate transportation performed by such a cooperative association or federation of cooperative associations for nonmembers who are neither farmers, cooperative associations, nor federations thereof for compensation, except transportation otherwise exempt under this chapter, shall be limited to that which is incidental to its primary transportation operation and necessary for its effective performance and shall in no event exceed 15 per centum of its total interstate transportation services in any fiscal year, measured in terms of tonnage: *Provided,* That, for the purposes hereof, notwithstanding any other provision of law, transportation performed for or on behalf of the United States or any agency or instrumentality thereof shall be deemed to be transportation performed for a nonmember: *Provided further,* That any such cooperative association or federation which performs interstate transportation for nonmembers who are neither farmers, cooperative associations, nor federations thereof, except transportation otherwise exempt under this chapter, shall notify the Commission of its intent to perform such transportation prior to the commencement thereof: *And provided further,* That in no event shall any such cooperative association or federation which is required hereunder to give notice to the Commission transport interstate for compensation in any fiscal year of such association or federation a quantity of property for nonmembers which, measured in terms of tonnage, exceeds the total quantity of property transported interstate for itself and its members in such fiscal year; or (6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation: *Provided,* That the words "property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof)" as used herein shall include property shown as "Exempt" in the "Commodity List" incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, but shall not include property shown therein as "Not exempt": *Provided further, however,* That not withstanding the preceding proviso the words "property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof)" shall not be deemed to include frozen fruits, frozen berries, frozen vegetables, cocoa beans, coffee beans, tea, bananas, or hemp, and wool imported from any foreign country, wool tops and noils, or wool waste (carded, spun, woven, or knitted), and shall be deemed to include cooked or uncooked (including breaded) fish or shell fish when frozen or fresh (but not including fish and shell fish which have been treated for preserving, such as canned, smoked, pickled, spiced, corned or kippered products); (7) motor vehicles used exclusively in the distribution of newspapers; or (7a) the transportation of persons or property by motor vehicle when incidental to transportation by aircraft; nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy declared in this Act, shall the provisions of this chapter, except the provisions of section 304 of this title relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment apply to: (8) the transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, and provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction; or (9) the casual, occasional, or reciprocal transportation of passengers or property by motor vehicle in interstate or foreign commerce for compensation by any person not engaged in transportation by motor vehicle as a regular occupation or business, unless, in the case of transportation of passengers, such transportation is sold or offered for sale, or provided or procured or furnished or arranged for, by a broker, or by any other person who sells or offers for sale transportation furnished by a person lawfully engaged in the transportation of passengers by motor vehicle under a certificate or permit issued under this chapter or under a pending application for such a certificate or permit; or (10) the emergency transportation of any accidentally wrecked or disabled motor vehicle in interstate or foreign commerce by towing.

(c) Certificate or permit; transportation within scope, and in furtherance, of primary business enterprise

Except as provided in section 302(c) of this title, subsection (b) of this section, in the exception in subsection (a)(14) of this section, and in the second proviso in section 306(a)(1) of this title, no person shall engage in any for-hire transportation business by motor vehicle, in interstate or foreign commerce, on any public highway or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such person a certificate or a permit issued by the Commission authorizing such transportation, nor shall any person engaged in any other business enterprise transport property by motor vehicle in interstate or foreign commerce for business purposes unless such transportation is within the scope, and in furtherance, of a pri-

mary business enterprise (other than transportation) of such person.

(Feb. 4, 1887, ch. 104, pt. II, § 203, as added Aug. 9, 1935, ch. 498, 49 Stat. 544, and amended June 23, 1938, ch. 601, § 1107(j), 52 Stat. 1029; June 29, 1938, ch. 811, §§ 2, 3, 52 Stat. 1237; Sept. 18, 1940, ch. 722, title I, §§ 16, 18, 54 Stat. 919, 920; Sept. 1, 1950, ch. 835, § 1, 64 Stat. 574; July 9, 1952, ch. 599, 66 Stat. 479; July 22, 1954, ch. 563, § 1, 68 Stat. 526; Aug. 3, 1956, ch. 905, § 1, 70 Stat. 958; Aug. 22, 1957, Pub. L. 85-163, § 1(1), (2), 71 Stat. 411; Aug. 12, 1958, Pub. L. 85-625, §§ 7(a), 8, 72 Stat. 573, 574; Aug. 23, 1958, Pub. L. 85-726, title XIV, § 1401(b), 72 Stat. 806; July 12, 1960, Pub. L. 86-615, § 3, 74 Stat. 384; Dec. 17, 1963, Pub. L. 88-208, 77 Stat. 402; July 26, 1968, Pub. L. 90-433, § 1, 82 Stat. 448.)

REFERENCES IN TEXT

The Agricultural Marketing Act, approved June 15, 1929, as amended, referred to in subsec. (b)(5), is act June 15, 1929, ch. 24, 46 Stat. 11, as amended, which is classified generally to chapter 7A (§ 1141 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1141j(f) of Title 12 and Tables volume.

For the national transportation policy declared in this Act, referred to in subsec. (b), see National Transportation Policy note preceding section 301 of this title.

This Act, referred to in subsec. (b), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 301 et seq.) and chapters 1, 12, 13, and 19 (§§ 1 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

The second proviso in section 306(a)(1) of this title, referred to in subsec. (c), was deleted by Pub. L. 87-805, Oct. 15, 1962, § 1, 76 Stat. 911, and is now covered by section 306(a)(6) and (7) of this title.

AMENDMENTS

1968—Subsec. (b)(5). Pub. L. 90-433 added provisions restricting the exemption for transportation by motor vehicles operated by an agricultural cooperative association, when such vehicles are used to perform transportation for nonmembers, to transportation for nonmembers who are neither farmers, cooperative associations, not federations thereof, where such transportation is incidental to the association's primary transportation operation and necessary for its effective performance, in no event is in excess of 15% of its total transportation service, such percentage to include transportation performed for the United States, and the association notifies the Commission in advance of its intent to perform such transportation.

1963—Subsec. (b). Pub. L. 88-208 added cl. (10) exempting the emergency transportation of any accidentally wrecked or disabled motor vehicle in interstate or foreign commerce by towing.

1960—Subsec. (a)(10). Pub. L. 86-615 inserted proviso clause.

1958—Subsec. (b). Pub. L. 85-625, § 7(a), inserted in cl. (6), the provisos defining "property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof)".

Subsec. (c). Pub. L. 85-625, § 8, prohibited persons engaged in any other business enterprise from transporting property by motor vehicle in interstate or foreign commerce for business purposes unless such transportation is within the scope, and in furtherance, of a primary business enterprise (other than transportation) of such person.

1957—Subsec. (a)(15). Pub. L. 85-163, § 1(1), limited the definition of "contract carrier by motor vehicle" to persons contracting with one person or a limited number of persons for furnishing of transportation services through assignment of motor vehicles for a continuing period to the exclusive use of person served, or for furnishing transportation services to meet need of individual customer.

Subsec. (c). Pub. L. 85-163, § 1(2) added subsec. (c).

1956—Subsec. (a)(22), (23). Act Aug. 3, 1956, added subsec. (a)(22), (23).

1954—Subsec. (a)(11). Act July 22, 1954, added the sentence additionally defining "foreign commerce" to include transportation between points in foreign countries, insofar as such transportation takes place within the United States.

1952—Subsec. (b). Act July 9, 1952, provided that horticultural commodities are to be included within the term "agricultural commodities" in clauses (4a) and (6).

1950—Subsec. (a)(8). Act Sept. 1, 1950, § 1(a) defined "United States".

Subsec. (a)(11). Act Sept. 1, 1950, § 1(b), gave the Commission jurisdiction over traffic within the States and the District of Columbia when such traffic originates in or is destined to a Territory or possession of the United States.

1940—Subsec. (a)(13). Act Sept. 18, 1940, § 18(b)(1), inserted exception concerning trolley busses.

Subsec. (a)(14). Act Sept. 18, 1940, § 18(a), among other changes, substituted "which holds itself out to the general public to engage in the transportation" for "who or which undertakes, whether directly or by a lease or any other arrangement, to transport" and substituted the exception concerning express companies for "including such motor vehicle operations of carriers by rail or water, and of express or forwarding companies, except to the extent that these operations are subject to the provisions of part I".

Subsec. (a)(15). Act Sept. 18, 1940, § 18(a), made changes in phraseology, changed the exception as to par. (14) to modify the transportation instead of the person, and omitted "whether directly or by a lease or any other arrangement".

Subsec. (b)(4a). Act Sept. 18, 1940, § 18(b)(3), substituted "when used" for "and used". Former subsec. (b)(4b) is now subsec. (b)(5).

Subsec. (b)(5). Act Sept. 18, 1940, redesignated former subsec. (b)(4b) as (b)(5) and inserted provision relating to a federation of cooperative associations. Former subsec. (b)(5), relating to trolley busses, was stricken out by act Sept. 18, 1940, § 18(b)(2), and is now covered by subsec. (a)(13) of this section.

Subsec. (b)(6). Act Sept. 18, 1940, § 18(b)(5), inserted "ordinary" preceding "livestock".

Subsec. (b), clause preceding par. (8). Act Sept. 18, 1940, § 16, substituted reference to the National transportation policy declared in the Interstate Commerce Act for a reference to the policy of Congress formerly enumerated in section 302 of this title.

Subsec. (b)(9). Act Sept. 18, 1940, § 18(b)(6), added exception concerning brokers and other persons selling transportation furnished by carriers under this chapter.

1938—Subsec. (a)(13). Act June 29, 1938, § 2, inserted "or any combination thereof determined by the Commission".

Subsec. (b)(6). Act June 29, 1938, § 3, omitted "exclusively" following "used" and added "if such motor vehicles are not used in carrying any other property or passengers, for compensation".

Subsec. (b)(7a). Act June 23, 1938, added subsec. (b)(7a).

EFFECTIVE DATE OF 1950 AMENDMENT

Section 4 of Act Sept. 1, 1950, provided in part that the amendment of subsecs. (a)(8) and (a)(11) by section 1 of act Sept. 1, 1950, shall take effect on the 120th day after Sept. 1, 1950.

REPEALS

Pub. L. 85-726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806, repealed act June 23, 1938, ch. 601, § 1107j, 52 Stat. 973, cited to the credit of this section.

TRANSPORTATION OF AGRICULTURAL COMMODITIES BY PERSONS HOLDING CERTIFICATES OR PERMITS ON AUGUST 12, 1958, OR UNDER CERTIFICATES OR PERMITS ISSUED PURSUANT TO APPLICATIONS FILED ON OR BEFORE AUGUST 12, 1958.

Section 7(b) of Pub. L. 85-625 provided that: "Unless otherwise specifically indicated therein, the holder of any certificate or permit heretofore issued by the Interstate Commerce Commission, or hereafter so issued pursuant to an application filed on or before the date on which this section takes effect [Aug. 12, 1958], authorizing the holder thereof to engage as a common or contract carrier by motor vehicle in the transportation in interstate or foreign commerce of property made subject to the provisions of part II of the Interstate Commerce Act [this chapter] by paragraph (a) of this section [amending subsec. (b)(6) of this section], over any route or routes or within any territory, may without making application under that Act [chapters 1, 8, 12, 13, and 19 of this title] engage, to the same extent and subject to the same terms, conditions and limitations, as a common or contract carrier by motor vehicle, as the case may be, in the transportation of such property, over such route or routes or within such territory, in interstate or foreign commerce."

ISSUANCE OF CERTIFICATES OR PERMITS TO PERSONS TRANSPORTING CERTAIN AGRICULTURAL COMMODITIES ON MAY 1, 1958

Section 7(c) of Pub. L. 85-625 provided that, subject to the provisions of section 310 of this title, if any person, or predecessor in interest, who was in bona fide operation on May 1, 1958, in the transportation of property made subject to the provisions of this chapter by section 7(a) of Pub. L. 85-625 (amending subsec. (b)(6) of this section), and had so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on May 1, 1958, during the season ordinarily covered by its operation, then the Interstate Commerce Commission was to issue a certificate or permit authorizing such operations as a common or contract carrier by motor vehicle if application was made to the Commission as provided for in this chapter and if within 120 days after Aug. 12, 1958.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 302, 304, 309, 312, 320, 322, 1002, 1018 of this title; title 39 section 5201; title 42 section 4917.

§ 304. Powers and duties of Commission

(a) Powers and duties generally

It shall be the duty of the Commission—

(1) To regulate common carriers by motor vehicle as provided in this chapter, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(2) To regulate contract carriers by motor vehicle as provided in this chapter, and to that end the Commission may establish reasonable requirements with respect to uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(3) To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment. In the event such requirements are established, the term "motor carrier" shall be construed to include private carriers of property by motor vehicle in the administration of subsection (c) of this section and sections 305, 320, 321, 322(a), (b), (d), (f), and (g), and 324 of this title.

(3a) Notwithstanding any other provision of section 303(b) of this title, to establish for carriers of migrant workers by motor vehicle reasonable requirements with respect to comfort of passengers, qualifications and maximum hours of service of operators, and safety of operation and equipment. Such requirements shall apply to any such carrier only in the case of transportation of any migrant worker for a total distance of more than seventy-five miles, and then only if such transportation is across the boundary line of any State, the District of Columbia, or Territory of the United States, or a foreign country. When such requirements are established, the term "motor carrier" shall be construed to include carriers of migrant workers by motor vehicle in the administration of subsection (c) of this section and sections 305, 320, 321, 322(a), (b), (d), (f) and (g), and 324 of this title.

(4) To regulate brokers as provided in this chapter, and to that end the Commission may establish reasonable requirements with respect to licensing, financial responsibility, accounts, records, reports, operations, and practices of any such person or persons.

(4a) To determine, upon its own motion, or upon application by a motor carrier, a State board, or any other party in interest, whether the transportation in interstate or foreign commerce performed by any motor carrier or class of motor carriers lawfully engaged in operation solely within a single State is in fact of such nature, character, or quantity as not substantially to affect or impair uniform regulation by the Commission of transportation by motor carriers engaged in interstate or foreign commerce in effectuating the national transportation policy declared in this Act. Upon so finding, the Commission shall issue a certificate of exemption to such motor carrier or class of motor carriers which, during the period such certificate shall remain effective and unrevoked, shall exempt such carrier or class of motor carriers from compliance with the provisions of this chapter, and shall attach to such certificate such reasonable terms and conditions as the public interest may require. At any time after the issuance of any such certificate of exemption, the Commission may by order revoke all or any part thereof, if it shall find that the transportation in interstate or foreign commerce performed by the carrier or class of carriers designated in such certificate shall be, or shall have become, or is reasonably likely to become, of such nature, character, or quantity as in fact substantially to affect or impair

uniform regulation by the Commission of interstate or foreign transportation by motor carriers in effectuating the national transportation policy declared in this Act. Upon revocation of any such certificate, the Commission shall restore to the carrier or carriers affected thereby, without further proceedings, the authority, if any, to operate in interstate or foreign commerce held by such carrier or carriers at the time the certificate of exemption pertaining to such carrier or carriers became effective. No certificate of exemption shall be denied, and no order of revocation shall be issued, under this subparagraph, except after reasonable opportunity for hearing to interested parties. Where an application is made in good faith for the exemption of a motor carrier under this subparagraph, accompanied by a certificate of a State board of the State in which the operations of such carrier are carried on stating that in the opinion of such board such carrier is entitled to a certificate of exemption under this subparagraph, such carrier shall be exempt from the provisions of this chapter beginning with the sixtieth day following the making of such application to the Commission unless prior to such time the Commission shall have by order denied such application, and such exemption shall be effective until such time as the Commission, after such sixtieth day, may by order deny such application or may by order revoke all or any part thereof as hereinbefore authorized. In any case where a motor carrier has become exempt from the provisions of this chapter as provided in this subparagraph, it shall not be considered to be a burden on interstate or foreign commerce for a State to regulate such carrier with respect to the operations covered by such exemption. Applications under this subparagraph shall be made in writing to the Commission, verified under oath, and shall be in such form and contain such information as the Commission shall by regulations require.

(5) For the purpose of carrying out the provisions pertaining to safety, the Commission may avail itself of the assistance of any of the several research agencies of the Federal Government having special knowledge of any such matter, to conduct such scientific and technical researches, investigations, and tests as may be necessary to promote the safety of operation and equipment of motor vehicles as provided in this chapter; the Commission may transfer to such agency or agencies such funds as may be necessary and available to make this provision effective.

(6) To administer, execute, and enforce all provisions of this chapter, to make all necessary orders in connection therewith, and to prescribe rules, regulations, and procedure for such administration; and

(7) For purposes of the administration of the provisions of this chapter, to inquire into the management of the business of motor carriers and brokers and into the management of the business of persons controlling, controlled by, or under common control with, motor carriers to the extent that the business of such persons is related to the management of the business of one or more motor carriers, and the Commission shall keep itself informed as to the manner and method in which the same are conducted, and may obtain from such carriers and persons such information as the Commission deems necessary to carry out the provisions of this chapter; and may transmit to Congress from time to time, such recommendations (including recommendations as to additional legislation) as the Commission may deem necessary.

(b) Classification of motor carriers

The Commission may from time to time establish such just and reasonable classifications of brokers or of groups of carriers included in the term "common carrier by motor vehicle", or "contract carrier by motor vehicle", as the special nature of the services performed by such carriers or brokers shall require; and such just and reasonable rules, regulations, and requirements, consistent with the provisions of this chapter, to be observed by the carriers or brokers so classified or grouped, as the Commission deems necessary or desirable in the public interest.

(c) Investigation of complaints; orders

Upon complaint in writing to the Commission by any person, State board, organization, or body politic, or upon its own initiative without complaint, the Commission may investigate whether any motor carrier or broker has failed to comply with any provision of this chapter, or with any requirement established pursuant thereto. If the Commission, after notice and hearing, finds upon any such investigation that the motor carrier or broker has failed to comply with any such provision or requirement, the Commission shall issue an appropriate order to compel the carrier or broker to comply therewith. Whenever the Commission is of opinion that any complaint does not state reasonable grounds for investigation and action on its part, it may dismiss such complaint.

(d) Application of sections 14 and 16(13) of this title

The provisions of sections 14 and 16(13) of this title, relating to reports, decisions, schedules, contracts, and other public records, shall apply in the administration of this chapter.

(e) Regulations governing use of vehicles owned by others

Subject to the provisions of subsection (f) of this section, the Commission is authorized to prescribe, with respect to the use by motor carriers (under leases, contracts, or other arrangements) of motor vehicles not owned by them, in the furnishing of transportation of property—

(1) regulations requiring that any such lease, contract, or other arrangement shall be in writing and be signed by the parties thereto, shall specify the period during which it is to be in effect, and shall specify the compensation to be paid by the motor carrier, and requiring that during the entire period of any such lease, contract, or other arrangement a copy thereof shall be carried in each motor vehicle covered thereby; and

(2) such other regulations as may be reasonably necessary in order to assure that while motor vehicles are being so used the motor carriers will have full direction and control of such vehicles and will be fully responsible for the operation thereof in accordance with ap-

plicable law and regulations, as if they were the owners of such vehicles, including the requirements prescribed by or under the provisions of this chapter with respect to safety of operation and equipment and inspection thereof, which requirements may include but shall not be limited to promulgation of regulations requiring liability and cargo insurance covering all such equipment.

(f) Exceptions to regulations for use of vehicles owned by others

Nothing in this chapter shall be construed to authorize the Commission to regulate the duration of any such lease, contract, or other arrangement for the use of any motor vehicle, with driver, or the amount of compensation to be paid for such use—

(1) where the motor vehicle so to be used is that of a farmer or of a cooperative association or a federation of cooperative associations, as specified in section 303(b)(4a) or (5) of this title, or is that of a private carrier of property by motor vehicle as defined in section 303(a)(17) of this title and is used regularly in the transportation of property of a character embraced within section 303(b)(6) of this title or perishable products manufactured from perishable property of a character embraced within section 303(b)(6) of this title, and such motor vehicle is to be used by the motor carrier in a single movement or in one or more of a series of movements, loaded or empty, in the general direction of the general area in which such motor vehicle is based; or

(2) where the motor vehicle so to be used is one which has completed a movement covered by section 303(b)(6) of this title and such motor vehicle is next to be used by the motor carrier in a loaded movement in any direction, and/or in one or more of a series of movements, loaded or empty, in the general direction of the general area in which such motor vehicle is based.

(Feb. 4, 1887, ch. 104, pt. II, § 204, as added Aug. 9, 1935, ch. 498, 49 Stat. 546, and amended June 29, 1938, ch. 811, § 4, 52 Stat. 1237; Sept. 18, 1940, ch. 722, title I, §§ 19, 20(a), (b), 54 Stat. 921, 922; Mar. 27, 1942, ch. 199, title I, § 101, 56 Stat. 176; Aug. 3, 1956, ch. 905, § 2, 70 Stat. 958; Aug. 3, 1956, ch. 928, 70 Stat. 983.)

REFERENCES IN TEXT

For the national transportation policy declared in the Interstate Commerce Act, referred to in subsec. (a)(4a), see National Transportation Policy note preceding section 301 of this title.

This Act, referred to in subsec. (a)(4a), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 301 et seq.) and chapters 1, 12, 13, and 19 (§§ 1 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

AMENDMENTS

1956—Subsec. (a)(3a). Act Aug. 3, 1956, c. 905, added subsec. (a)(3a).

Subsecs. (e), (f). Act Aug. 3, 1956, c. 928, added subsecs. (e) and (f). Former subsecs. (e) and (f) expired on Mar. 31, 1947. See 1942 Amendments.

1942—Subsecs. (e), (f). Act Mar. 27, 1942, added subsecs. (e) and (f) which related to powers of Commission in case of emergency and change, suspension, and waiver of orders, licenses, etc., and which expired on Mar. 31, 1947, by virtue of section 1501 of act Mar. 27, 1942, as amended. For further details, see Expiration of Amendments note set out below.

1940—Subsec. (a)(3). Act Sept. 18, 1940, § 20(b), struck out reference to subsecs. (d) and (e) of this section and substituted reference to subsec. (c) of this section.

Subsec. (a)(4a). Act Sept. 18, 1940, § 19, added subsec. (a)(4a).

Subsec. (a)(7). Act Sept. 18, 1940, § 20(a), inserted provisions relating to inquiry into management of business of persons controlling or controlled by motor carriers and to obtaining necessary information from them.

Subsec. (b). Act Sept. 18, 1940, § 20(b), redesignated former subsec. (c) as (b), and also repealed former subsec. (b), which related to codes of fair competition under the former National Industrial Recovery Act.

Subsec. (c). Act Sept. 18, 1940, § 20(b), redesignated former subsec. (d) as (c), and also redesignated former subsec. (c) to be "(b)".

Subsec. (d). Act Sept. 18, 1940, § 20(b), redesignated former subsec. (f) as (d), and also redesignated former subsec. (d) to be "(c)".

Subsec. (e). Act Sept. 18, 1940, § 20(b), repealed subsec. (e) which related to reconsideration or rehearing by Commission.

Subsec. (f). Act Sept. 18, 1940, § 20(b), redesignated former subsec. (f) as (d).

1938—Subsec. (a)(6). Act June 29, 1938, omitted "other" following "enforce all".

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Interstate Commerce Commission and the Chairman, members, offices, and officers thereof under subsecs. (a)(3), (a)(3a), and (a)(5), and, to the extent that they relate to qualifications and maximum hours of service of employees and safety of operation and equipment, under subsecs. (a)(1) and (a)(2) were transferred to the Secretary of Transportation by Pub. L. 89-670, § 6(e)(6)(C), Oct. 15, 1966, 80 Stat. 939, which created the Department of Transportation. See section 1655 of this title.

CARRIERS OF MIGRANT FARM WORKERS AS EXCEPTED FROM EXEMPTION OF FAIR LABOR STANDARDS ACT

Section 3 of act Aug. 3, 1956, provided that: "Section 13(b)(1) of the Fair Labor Standards Act, as amended [section 213(b)(1) of Title 29, Labor] shall not apply in the case of any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service solely by virtue of section 204(a)(3a) of the Interstate Commerce Act [subsection (a)(3a) of this section]."

HAZARDOUS SUBSTANCES

Federal Hazardous Substances Act as not modifying subsections (a)(2) and (a)(3) of this section, see Pub. L. 86-613, § 17, July 12, 1960, 74 Stat. 380, set out as a note under section 1261 of Title 15, Commerce and Trade.

EXPIRATION OF AMENDMENTS MADE BY ACT MARCH 27, 1942

Act Mar. 27, 1942, which amended section by adding prior subsecs. (e) and (f) expired on Mar. 31, 1947, by virtue of section 1501 of act Mar. 27, 1942, as amended (60 Stat. 345; 50 U.S.C., App. 645).

CROSS REFERENCES

Control defined, see section 1 of this title.

Foreign commerce defined, see section 303 of this title.

Noncarrier deemed carrier upon acquiring control, see section 5 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 5, 302, 303, 305, 308, 309, 312, 1018, 1655 of this title; title 29 section 213.

§ 304a. Actions for recovery of charges; limitation of actions; definition; effective date; actions by or against United States

(1) All actions at law by common carriers by motor vehicle subject to this chapter for the recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.

(2) For recovery of reparations, action at law shall be begun against common carriers by motor vehicle subject to this chapter within two years from the time the cause of action accrues, and not after, and for recovery of overcharges, action at law shall be begun against common carriers by motor vehicle subject to this part within three years from the time the cause of action accrues, and not after, subject to paragraph (3) of this section, except that if claim for the overcharge has been presented in writing to the carrier within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

(3) If on or before expiration of the three-year period of limitation in paragraph (2) of this section a common carrier by motor vehicle subject to this chapter begins action under paragraph (1) of this section for recovery of charges in respect of the same transportation service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or such charges are collected by the carrier.

(4) The cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after.

(5) The term "reparations" as used in this section means damage resulting from charges for transportation services to the extent that the Commission, upon complaint made as provided in section 316(e) of this title, finds them to have been unjust and unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial.

(6) The term "overcharges" as used in this section shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Commission.

(7) The provisions of this section shall apply only to cases in which the cause of action may accrue after June 29, 1949.

(8) The provisions of this section shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this chapter: *Provided, however,* That with respect to such transportation of property or passengers for or on behalf of the United States the periods of limitation herein provided shall be extended to include three years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 66 of this title, whichever is later.

(Feb. 4, 1887, ch. 104, pt. II, § 204a, as added June 29, 1949, ch. 272, § 1, 63 Stat. 280, and amended Aug. 26, 1958, Pub. L. 85-762, § 1(3), (4), 72 Stat. 860; Sept. 6, 1965, Pub. L. 89-170, § 6, 79 Stat. 651.)

AMENDMENTS

1965—Par. (2). Pub. L. 89-170, § 6(a), authorized the bringing of actions at law for recovery of reparations within 2 years from the time the cause of action accrues.

Par. (5). Pub. L. 89-170, § 6(b), added par. (5). Former par. (5) redesignated as par. (6).

Par. (6). Pub. L. 89-170, § 6(b), redesignated par. (5) as par. (6). Former par. (6) redesignated par. (7).

Par. (7). Pub. L. 89-170, § 6(b), designated par. (6) as par. (7). Former par. (7) redesignated par. (8).

Par. (8). Pub. L. 89-170, § 6(b), redesignated par. (7) as par. (8)

1958—Pars. (1), (2), and (3). Pub. L. 85-762, § 1(3), substituted three-year limitations for the former two-year limitations.

Par. (7). Pub. L. 85-762, § 1(4), added par. (7).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-762 applicable only to cause of action which accrues on or after Aug. 26, 1958, see section 3 of Pub. L. 85-762 set out as an Effective Date of 1958 Amendment note under section 16 of this title.

§ 305. Administration

(a) Joint boards; composition; references of matters to boards

The Commission shall, when operations of motor carriers or brokers conducted or proposed to be conducted involve not more than three States, and the Commission may, in its discretion, when operations of motor carriers or brokers conducted or proposed to be conducted involve more than three States, refer to a joint board for appropriate proceedings thereon, any of the following matters arising in the administration of this chapter with respect to such operations as to which a hearing is required or in the judgment of the Commission is desirable: Applications for certificates, permits, or licenses; the suspension, change, or revocation of such certificates, permits, or licenses; applications for the approval and authorization of consolidations, mergers, and acquisitions of control or operating contracts; complaints as to violations by motor carriers or brokers of the requirements established under section 304(a) of this title; and complaints as to rates, fares, and charges of motor carriers or the practices of brokers: *Provided, however,* That if the Commission is prevented by legal proceedings from referring a matter to a joint board, it may determine such matter as provided in section 17 of this title. The Commission, in its discretion, may also refer to a joint board any investigation and suspension proceeding or other matter not specifically mentioned above which may arise under this chapter. The joint board to which any such matter is referred shall be composed solely of one member from each State within which the motor-carrier or brokerage operations involved in such matter are or are

proposed to be conducted: *Provided*, That the Commission may designate an examiner or examiners to advise with and assist the joint board under such rules and regulations as it may prescribe. In acting upon matters so referred, joint boards shall be vested with the same rights, duties, powers, and jurisdiction as are hereinbefore vested in members or examiners of the Commission to whom a matter is referred for hearing and the recommendation of an appropriate order thereon: *Provided, however*, That a joint board may, in its discretion, report to the Commission its conclusions upon the evidence received, if any, without a recommended order. Orders recommended by joint boards shall be filed with the Commission, and shall become orders of the Commission and become effective in the same manner, and shall be subject to the same procedure, as provided in the case of orders recommended by members or examiners under section 17 of this title. If a joint board to which any matter has been referred shall report its conclusions upon the evidence without a recommended order, such matter shall thereupon be decided by the Commission, giving such weight to such conclusions as in its judgment the evidence may justify.

(b) Creation of joint board; rules and procedure; nominations for membership; procedure on failure of board to act

Whenever there arises in the administration of this chapter any matter that the Commission is required to refer to a joint board, or that the Commission determines, in its discretion, to refer to a joint board, the Commission shall, if no joint board eligible to consider said matter is in existence, create a joint board to consider the matter when referred, and to recommend appropriate order thereon. The Commission shall prescribe rules governing meetings and procedure of joint boards and may, in the event of legal proceedings preventing reference to a joint board, determine the matter as provided in section 17 of this title. Except as hereinafter provided, a joint board shall consist of a member from each State in which the motor carrier or brokerage operations involved are or are proposed to be conducted. The member from any such State shall be nominated by the board of such State from its own membership or otherwise; or if there is no board in such State or if the board of such State fails to make a nomination when requested by the Commission, then the Governor of such State may nominate such member. The Commission is authorized to appoint as a member upon the joint board any such nominee approved by it. If both the board and the Governor of any State shall fail to nominate a joint board member when requested, then the joint board shall be constituted without a member from such State, if members for two or more States shall have been nominated and approved by the Commission. All decisions and recommendations by joint boards shall be by majority vote: *Provided, however*, That in any matter where only one member shall participate in a hearing such member shall constitute a quorum and make recommendation of an order thereon. If the board of each State from which a member of a joint board is entitled to be appointed shall waive action on any matter referred to such joint board, or if any joint board fails or refuses to act, or is unable to agree upon any matter submitted to it within forty-five days after the matter is referred to it or such other period as the Commission may authorize, or if a member shall not be nominated for more than one State (except only when the operations proposed shall be into or through territory foreign to the United States), then such matter shall be decided as in the case of any matter not required to be referred to a joint board. The failure of a duly appointed member of a joint board to participate in any hearing on a matter referred to such joint board, after notice thereof, shall be considered to constitute, as to the matter referred, a waiver of action on the part of the State from which such member was appointed, but shall not affect the duty and power of the remaining members or member of said joint board, if any, to proceed with said hearing, to consider such matter, and to make recommendation of an order thereon. When any proceeding required to be referred to a joint board shall involve operations of a motor carrier conducted or proposed to be conducted into or through territory foreign to the United States, if a single State shall be involved, or if only one State shall make nomination of a joint board member through its Governor or State board, then the Commission, in such case, may receive from that State the nomination of not more than three members and may appoint such nominees to constitute the joint board. Members of joint boards when administering the provisions of this part shall receive such allowances for travel and subsistence expenses as the Commission shall provide. A joint board shall continue in existence for the consideration of matters referred to it by the Commission until such time as its existence may be terminated by the Commission. A substitution of membership upon a joint board from any State may be made at any time by nomination and appointment in the same manner as an original nomination and appointment.

(c) Place of holding hearings

Where practicable and as the Commission may by rule or order direct, hearings by any member, examiner, or joint board upon any matter referred to him or to such board shall be held at such places within the United States as are convenient to the parties.

(d) Oaths; attendance of witnesses and production of documents

So far as may be necessary for the purposes of this chapter, the Commission and the members and examiners thereof and joint boards shall have the same power to administer oaths, and require by subpena the attendance and testimony of witnesses and the production of books, papers, tariffs, contracts, agreements, and documents, and to take testimony by deposition, relating to any matter under investigation, as the Commission has in a matter arising under chapter 1 of this title; and any person subpenaed or testifying in connection with any matter under investigation under this chapter shall have the same rights, privileges, and immunities and be subject to the same duties, liabilities, and penalties as though such matter

arose under chapter 1 of this title, unless otherwise provided in this chapter.

(e) Notice of proceedings and opportunity for hearing

In accordance with rules prescribed by the Commission, reasonable notice shall be afforded, in connection with any proceeding under this chapter, to interested parties and to the board of any State, or to the governor if there be no board, in which the motor carrier operations involved in the proceeding are or are proposed to be conducted, and opportunity for intervention in any such proceeding for the purpose of making representations to the Commission or for participating in a hearing, if a hearing is held, shall be afforded to all interested parties.

(f) Joint hearings with State authorities; offices for boards and State commissions

The Commission is authorized to confer with or to hold joint hearings with any authorities of any State in connection with any matter arising in any proceedings under this chapter. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities as fully as may be practicable, in the enforcement or administration of any provision of this chapter. In addition, the Commission is authorized to make cooperative agreements with the various States to enforce the economic and safety laws and regulations of the various States and the United States concerning highway transportation. From any space in the Interstate Commerce Commission Building not required by the Commission, the Government authority controlling the allocation of space in public buildings shall assign for the use of the national organization of the State commissions and of their representatives suitable office space and facilities which shall be at all times available for the use of joint boards created under this chapter and for members and representatives of such boards cooperating with the Commission or with any other Federal commission or department under this or any other Act; and if there be no such suitable space in the Interstate Commerce Commission Building, the same shall be assigned in some other building in convenient proximity thereto.

(g) Court review of Commission's orders; compelling Commission to take jurisdiction

Any final order made under this chapter shall be subject to the same right of relief in court by any party in interest as is now provided in respect to orders of the Commission made under chapter 1 of this title: *Provided,* That where the Commission, in respect of any matter arising under this chapter, shall have issued a negative order solely because of a supposed lack of power, any such party in interest may commence appropriate judicial proceedings in a court of the United States under those provisions of law applicable in the case of proceedings to enjoin or suspend rules, regulations, or orders of the Commission and such court, if it determines that the Commission has such power, may enforce by writ of mandatory injunction the Commission's taking of jurisdiction.

(h) Application of section 17 of this title

All the provisions of section 17 of this title shall apply to all proceedings under this chapter.

(i) Pecuniary interest in motor carrier under investigation forbidden

No member or examiner of the Commission or member of a joint board shall hold any official relation to, or own any securities of, or be in any manner pecuniarily interested in, any motor carrier or in any carrier by railroad, water, or other form of transportation.

(j) Employees, examiners, attorneys, etc.; authority to employ

The Commission is authorized to employ, and to fix the compensation of, such experts, assistants, special agents, examiners, attorneys, and other employees as in its judgment may be necessary or advisable for the convenience of the public and for the effective administration of this chapter.

(Feb. 4, 1887, ch. 104, pt. II, § 205, as added Aug. 9, 1935, ch. 498, 49 Stat. 548, and amended June 29, 1938, ch. 811, §§ 5–7, 52 Stat. 1237, 1238; Sept. 18, 1940, ch. 722, title I, § 20(c), (d), 54 Stat. 922, 923; May 24, 1949, ch. 139, § 133, 63 Stat. 108; July 26, 1949, ch. 361, 63 Stat. 479; Sept. 6, 1965, Pub. L. 89–170, § 1, 79 Stat. 648; Jan. 2, 1975, Pub. L. 93–584, § 9, 88 Stat. 1918.)

REFERENCES IN TEXT

This Act, referred to in subsec. (f), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter, (§ 301 et seq.) and chapters 1, 12, 13, and 19 (§§ 1 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

AMENDMENTS

1975—Subsec. (g). Pub. L. 93–584 substituted provisions that a party in interest may commence appropriate judicial proceedings in a court of the United States under provisions of law applicable in the case of proceedings to enjoin or suspend rules, regulations, or orders of the Commission, for provisions that a party in interest may file a bill of complaint with the appropriate District Court of the United States, convened under section 2284 of Title 28.

1965—Subsec. (f). Pub. L. 89–170 added provision authorizing the Commission to make cooperative agreements with the various states to enforce the economic and safety laws and regulations of the various states and the United States concerning highway transportation.

1949—Subsec. (b). Act July 26, 1949, clarified the jurisdiction of the board where some members are not present, and permitted the members present to proceed with the hearing, and to make its decision and recommendation to the Commission.

Subsec. (g). Act May 24, 1949, substituted "section 2284 of title 28" for the "Urgent Deficiency Appropriation Act, October 22, 1913".

1940—Subsec. (a). Act Sept. 18, 1940, § 20(c), redesignated former subsec. (b) as (a). Former subsec. (a), repealed by act Sept. 18, 1940, § 20(c), related to procedure on hearings by Commission and referred hearings by Commission member or examiner, and is now covered by section 17 of this title.

Subsec. (b). Act Sept. 18, 1940, § 20(c), (d) redesignated former subsec. (c) as (b). Former subsec. (b) redesignated (a) by section 20(c) of act Sept. 18, 1940.

Subsecs. (c) to (j). Act Sept. 18, 1940, § 20(c), redesignated former subsecs. (d) to (k) as (c) to (j), respectively.

1938—Subsec. (a). Act June 29, 1938, § 5, inserted provision relating to hearing of matters which in the judgment of the Commission are desirable for determination.

Subsec. (b). Act June 29, 1938, § 6, among other changes, inserted provisions relating to required or desirable hearings, discretionary report of the joint board without recommendation, and decision by the Commission of matter reported by joint board without recommendation.

Subsec. (f). Act June 29, 1938, § 7, inserted provisions relating to opportunity to make representations to Commission by intervenors or for participation in hearing.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-584 not applicable to actions commenced on or before the last day of the first month beginning after Jan. 2, 1975, and actions to enjoin or suspend orders of the Interstate Commerce Commission which are pending when this amendment becomes effective shall not be affected thereby, but shall proceed to final disposition under the law existing on the date they were commenced, see section 10 of Pub. L. 93-584, set out as an Effective Date of 1975 Amendment note under section 2321 of Title 28, Judiciary and Judicial Procedure.

MOTOR CARRIER CLAIMS COMMISSION

Acts July 2, 1948, ch. 808, 62 Stat. 1222; Aug. 13, 1948, ch. 835, 62 Stat. 1289; May 24, 1949, ch. 138, title I, § 101, 63 Stat. 80; Oct. 10, 1949, ch. 662, title I, § 101, 63 Stat. 743; July 11, 1951, ch. 220, 65 Stat. 116, which created a commission to hear and determine claims against the United States arising out of the taking of possession and control of motor-carrier transportation systems, were repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 654.

CROSS REFERENCES

Motor carrier construed, see section 304 of this title.
Unifications, mergers, and acquisition of control, notice of application for, see section 5 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5, 17, 302, 303, 304, 1655 of this title; title 47 section 410.

§ 305a. Joint Board, transportation requests

Joint Board members may use Government transportation requests when traveling in connection with their duties as Joint Board members.

(Pub. L. 94-387, title II, § 201, Aug. 14, 1976, 90 Stat. 1182.)

CODIFICATION

Section was not enacted as part of act Feb. 4, 1887, ch. 104, pt. II, as added Aug. 9, 1935, ch. 498, 49 Stat. 543, known as part II of the Interstate Commerce Act, which comprises this chapter.

SIMILAR PROVISIONS

Section was from the Department of Transportation and Related Agencies Appropriation Act, 1977. Similar provisions were contained in the following appropriations acts:

Nov. 24, 1975, Pub. L. 94-134, title II, § 201, 89 Stat. 707.
Aug. 28, 1974, Pub. L. 93-391, title II, § 201, 88 Stat. 778.
Aug. 16, 1973, Pub. L. 93-98, title II, § 201, 87 Stat. 338.
Aug. 22, 1972, Pub. L. 92-398, title II, § 201, 86 Stat. 588.
Aug. 19, 1971, Pub. L. 92-74, title II, § 201, 85 Stat. 211.
Dec. 26, 1969, Pub. L. 91-168, title II, § 201, 83 Stat. 461.
Oct. 4, 1968, Pub. L. 90-550, title I, § 101, 82 Stat. 944.
Nov. 3, 1967, Pub. L. 90-121, title I, § 101, 81 Stat. 349.
Sept. 6, 1966, Pub. L. 89-555, title I, § 101, 80 Stat. 675.
Aug. 16, 1965, Pub. L. 89-128, title I, § 101, 79 Stat. 533.
Aug. 30, 1964, Pub. L. 88-507, title I, § 101, 78 Stat. 657.
Dec. 19, 1963, Pub. L. 88-215, title I, § 101, 77 Stat. 439.
Oct. 3, 1962, Pub. L. 87-741, title I, § 101, 76 Stat. 730.
Aug. 17, 1961, Pub. L. 87-141, title I, § 101, 75 Stat. 354.
July 12, 1960, Pub. L. 86-826, title I, § 101, 74 Stat. 435.
Sept. 14, 1959, Pub. L. 86-225, title I, § 101, 73 Stat. 509.
Aug. 28, 1958, Pub. L. 85-844, title I, § 101, 72 Stat. 1071.
June 29, 1957, Pub. L. 85-69, title I, § 101, 71 Stat. 233.
June 27, 1956, ch. 452, title I, § 101, 70 Stat. 346.
June 30, 1955, ch. 244, title I, § 101, 69 Stat. 207.
June 24, 1954, ch. 359, title I, § 101, 68 Stat. 284.
July 31, 1953, ch. 302, title I, § 101, 67 Stat. 308.
July 5, 1952, ch. 578, title I, § 101, 66 Stat. 404.
Aug. 31, 1951, ch. 376, title I, § 101, 65 Stat. 276.
Sept. 6, 1950, ch. 896, ch. VIII, title I, § 101, 64 Stat. 710.
Aug. 24, 1949, ch. 506, title I, § 101, 63 Stat. 645.
Apr. 20, 1948, ch. 219, title I, § 101, 62 Stat. 187.
July 30, 1947, ch. 359, title I, § 101, 61 Stat. 598.
Mar. 28, 1946, ch. 113, title I, § 101, 60 Stat. 71.
May 3, 1945, ch. 106, title I, § 101, 59 Stat. 120.
June 27, 1944, ch. 286, title I, § 101, 58 Stat. 373.
June 26, 1943, ch. 145, title I, § 101, 57 Stat. 183.
June 27, 1942, ch. 450, § 1, 56 Stat. 413.
Apr. 5, 1941, ch. 40, § 1, 55 Stat. 114.
Apr. 18, 1940, ch. 107, § 1, 54 Stat. 133.
Mar. 16, 1939, ch. 11, § 1, 53 Stat. 534.
May 23, 1938, ch. 259, § 1, 52 Stat. 420.
June 28, 1937, ch. 396, § 1, 50 Stat. 338.
May 14, 1937, ch. 179, 50 Stat. 136.

§ 306. Certificate of convenience and necessity

(a) Necessity for; carriers in bona fide operation on June 1, 1935; traffic moving to and from Territories and possessions; "grandfather" provisions

(1) Except as otherwise provided in this section and in section 310a of this title, no common carrier by motor vehicle subject to the provisions of this chapter shall engage in any interstate or foreign operations on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: *Provided, however,* That, subject to section 310 of this title, if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation and has so operated since that time, except in either instances as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission

shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate was made to the Commission as provided in subsection (b) of this section and within one hundred and twenty days after October 1, 1935, and if such carrier was registered on June 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operations to be considered in connection with the issuance of such certificate. Otherwise the application for such certificate shall be decided in accordance with the procedure provided for in section 307(a) of this title and such certificate shall be issued or denied accordingly. Pending the determination of any such application the continuance of such operation shall be lawful.

(2) Unless otherwise specifically indicated in such certificate, the holder of any certificate heretofore issued under this chapter, or hereafter issued under this chapter pursuant to an application filed on or before September 1, 1950, authorizing the holder thereof to engage as a common carrier by motor vehicle in the transportation in interstate or foreign commerce of passengers or property over any route or routes or within any territory, may without making application under this section engage, to the same extent and subject to the same terms, conditions, and limitations, as a common carrier by motor vehicle in the transportation of passengers or property, as the case may be, over such route or routes or within such territory, in commerce between places in the United States and places in Territories or possessions of the United States.

(3) Subject to the provisions of section 310 of this title, if any person (or its predecessor in interest) was in bona fide operation on March 1, 1950, over any route or routes or within any territory, as a common carrier engaged in the transportation of passengers or property by motor vehicle in commerce between any place in the United States and any place in a Territory or possession of the United States, and has so operated since that time (or if engaged in furnishing seasonal service only, was in bona fide operation on March 1, 1950, during the season ordinarily covered by its operations and has so operated since that time), except in either instance as to interruptions of service over which such applicant or its predecessor in interest had no control, the Commission shall issue a certificate authorizing such operations without requiring further proof that public convenience and necessity will be served thereby, and without further proceedings, if application for such certificate is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after September 1, 1950. Pending the determination of any such application, the continuance of such operation without a certificate shall be lawful. Any carrier which, on September 1, 1950, is engaged in an operation of the character specified in the foregoing provisions of this subparagraph, but was not engaged in such operation on March 1, 1950, may under such regulations as the Commission shall prescribe, if application for a certificate is made to the Commission within one hundred and twenty days after September 1, 1950, continue such operation without a certificate pending the determination of such application in accordance with section 307(a) of this title.

(4) Subject to the provisions of section 310 of this title, any common carrier by motor vehicle which, on July 12, 1960, is the holder of a certificate or certificates described in paragraph (2) of this subsection or issued under paragraph (3) of this subsection or section 307(a) of this title, authorizing transportation by motor vehicle between places in the United States of passengers or property in commerce between the United States and the Territory of Alaska, and on August 26, 1958, it or its predecessor in interest was engaged in the transportation of passengers or property as a common carrier by motor vehicle between places in the United States and places in Alaska, and such operations have been continued since that time (or if engaged in furnishing seasonal service only, was engaged in such operations in the year 1958 during the season ordinarily covered by its operations, and such operations have not been discontinued), except in either instance as to interruptions of service over which the carrier or its predecessor in interest had no control, shall be issued a certificate authorizing transportation to or from the points or areas in Alaska served by it, from or to all points in the other States of the United States designated in the above-mentioned certificate or certificates held by the carrier, of passengers or the class or classes of commodities specified therein, to the extent that under the said certificate or certificates the carrier, prior to the date of admission of Alaska into the Union, was authorized to perform within the States all transportation required for through motor vehicle transportation by the carrier to or from places in the Territory of Alaska, without requiring further proof that public convenience and necessity will be served thereby and without further proceedings, if application for such certificate is made to the Commission as provided herein on or before December 31, 1960. Pending the determination of such application, the continuance of such operations without a certificate shall be lawful. Applications for certificates under this paragraph shall be made in writing to the Commission and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as shall be required by the Commission.

(5) Subject to the provisions of section 310 of this title, if any person (or his predecessor in interest) was in operation on August 26, 1958, over any route or routes, or in any area or areas, as a common carrier engaged in the transportation in interstate or foreign commerce of passengers or property by motor vehicle between places in the Territory of Alaska, and has so operated in Alaska since that time (or if engaged in furnishing seasonal service only, was engaged in such operation in the year 1958 during the season ordinarily covered by its operations, and such operations have not been discontinued), except in either instance as to interruptions of service over which such person or his predecessor in interest had no control, a certificate shall be issued authorizing such op-

erations without requiring further proof that public convenience and necessity will be served thereby, and without further proceeding, if application for such certificate is made as provided herein on or before December 31, 1960: *Provided, however,* That common carriers of passengers by motor vehicle shall as a condition precedent to the establishment of rights hereunder show compliance with the applicable acts of the Territory of Alaska, and the rules and regulations of the Alaska Bus Commission. Pending the determination of any such application the continuance of such operation without a certificate shall be lawful. Applications for certificates under this paragraph shall be made to the Commission in writing, and in such form, contain such information, and be accompanied by proof of service upon such interested parties as the Commission shall require.

(6) On and after October 15, 1962 no certificate of public convenience and necessity under this chapter shall be required for operations in interstate or foreign commerce by a common carrier by motor vehicle operating solely within a single State and not controlled by, controlling, or under a common control with any carrier engaged in operations outside such State, if such carrier has obtained from the commission of such State authorized to issue such certificates, a certificate of public convenience and necessity authorizing motor vehicle common carrier operations in intrastate commerce and such certificate recites that it was issued after notice to interested persons through publication in the Federal Register of the filing of the application and of the desire of the applicant also to engage in transportation in interstate and foreign commerce within the limits of the intrastate authority granted, that reasonable opportunity was afforded interested persons to be heard, that the State commission has duly considered the question of the proposed interstate and foreign operations and has found that public convenience and necessity require that the carrier authorized to engage in intrastate operations also be authorized to engage in operations in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations authorized to be conducted. Such operations in interstate and foreign commerce shall, however, be subject to all other applicable requirements of this Act and the regulations prescribed hereunder. Such rights to engage in operations in interstate or foreign commerce shall be evidenced by appropriate certificates of registration issued by the Commission which shall be valid only so long as the holder is a carrier engaged in operations solely within a single State, not controlled by, controlling, or under a common control with a carrier engaged in operations outside such State, and except as provided in section 5 of this title and in the conditions and limitations stated herein, may be transferred pursuant to such rules and regulations as may be prescribed by the Commission, but may not be transferred apart from the transfer of the corresponding intrastate certificate, and the transfer of the intrastate certificate without the interstate or foreign rights shall terminate the right to engage in interstate or foreign commerce. The termination, restriction in scope, or suspension of the intrastate certificate shall on the 180th day thereafter terminate or similarly restrict the right to engage in interstate or foreign commerce unless the intrastate certificate shall have been renewed, reissued, or reinstated or the restrictions removed within said one hundred eighty-day period. Such rights shall be subject to suspension or termination by the Commission in accordance with the provisions of this Act governing the suspension and termination of certificates issued by the Commission. The Commission may impose reasonable requirements with respect to the filing with it of certified copies of such State certificates and other appropriate statements and data, and compliance with applicable requirements established by and under the authority of statutes applicable to interstate and foreign operations administered by the Commission as conditions precedent to engaging in interstate and foreign operations under the authority of such State certificate. In accordance with such reasonable rules as may be prescribed by the Commission, any party in interest, who or which opposed in the State commission proceeding the authorization of operations in interstate or foreign commerce, may petition the Commission for reconsideration of the decision of the State commission authorizing operations in interstate or foreign commerce, and upon such reconsideration upon the record made before the State commission, the Commission may affirm, reverse, or modify the decision of the State commission, but only with respect to the authorization of operations in interstate and foreign commerce.

(7)(A) In the case of any person who or which on October 15, 1962, was in operation solely within a single State as a common carrier by motor vehicle in intrastate commerce (excluding persons controlled by, controlling, or under a common control with, a carrier engaged in operations outside such State), and who or which was also lawfully engaged in such operations in interstate or foreign commerce under the certificate exemption provisions of the second proviso of paragraph (1) of this subsection, as in effect immediately before October 15, 1962, or who or which would have been so lawfully engaged in such operations but for the pendency of litigation to determine the validity of such person's intrastate operations to the extent such litigation is resolved in favor of such person, and has continued to so operate since October 15, 1962 (or if engaged in furnishing seasonal service only, was lawfully engaged in such operations in the year 1961 during the season ordinarily covered by its operations, and such operations have not been discontinued), except in either instance as to interruptions of service over which such person had no control, the Commission shall issue to such person a certificate of registration authorizing the continuance of such transportation in interstate and foreign commerce if application and proof of operations are submitted as provided in this subsection. Such certificate of registration shall not exceed in scope the services authorized by the State certificate to be conducted in intrastate commerce, and shall be subject to the same terms, conditions, and limitations as are contained in or attached to the State certificate except to the extent that such terms, condi-

tions, or limitations are inconsistent with the requirements established by or under this Act. If the effectiveness of the State certificate is limited to a specified period of time, the certificate of registration issued under this paragraph (7) shall be similarly limited. Operations in interstate and foreign commerce under such certificates of registration shall be subject to all other applicable requirements of this Act and the regulations prescribed hereunder. Certificates of registration shall be valid only so long as the holder is a carrier engaged in operation solely within a single State, not controlled by, controlling, or under a common control with a carrier engaged in operation outside such State, and except as provided in section 5 of this title and in the conditions and limitations stated herein, may be transferred pursuant to such rules and regulations as may be prescribed by the Commission, but may not be transferred apart from the transfer of the corresponding intrastate certificate, and the transfer of the intrastate certificate without the interstate or foreign rights shall terminate the right to engage in interstate or foreign commerce. The termination, restriction in scope, or suspension of the intrastate certificate shall on the 180th day thereafter terminate or similarly restrict the right to engage in interstate or foreign commerce unless the intrastate certificate shall have been renewed, reissued, or reinstated or the restrictions removed within said one hundred and eighty-day period. Such certificates of registration shall be subject to suspension or termination by the Commission in accordance with the provisions of this Act governing the suspension and termination of certificates of public convenience and necessity issued by the Commission.

(B) All rights to engage in operations in interstate and foreign commerce under the provisions of the second proviso of paragraph (1) of this subsection, as in effect immediately before October 15, 1962, shall cease and terminate, but any carrier lawfully engaged in interstate and foreign operations on October 15, 1962, or any carrier who would have been so lawfully engaged in such operations but for the pendency of litigation to determine the validity of such person's intrastate operations to the extent such litigation is resolved in favor of such person, pursuant to such provisions, may continue such operations for 120 days after October 15, 1962, and, if an appropriate application for a certificate of registration is filed within such period, such operations may be continued pending the determination of such application. The Commission shall prescribe the form of such application, the information and documents to be furnished, the manner of filing, and the persons to whom or the manner of giving notice to interested persons of such filings. Issues arising in the determination of such applications shall be determined in the most expeditious manner and, so far as practicable and legally permissible, without formal hearings or other proceedings. A notice of intent to engage in interstate and foreign operations accompanied by certified copies of effective, lawfully issued or acquired State certificates filed with the Commission as evidence of authority to operate in interstate or foreign commerce under the provisions of the second proviso of paragraph (1) of this subsection, as in effect immediately before October 15, 1962, shall be conclusive proof that the applicant is lawfully engaged in interstate and foreign operations and the scope thereof.

(b) Application for certificate; form and contents

Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission shall, by regulation, require. Any person, not included within the provisions of subsection (a) of this section, who or which is engaged in transportation in interstate or foreign commerce as a common carrier by motor vehicle on October 1, 1935 may continue such operation for a period of one hundred and twenty days thereafter without a certificate and, if application for such certificate is made to the Commission within such period, the carrier may, under such regulations as the Commission shall prescribe, continue such operation until otherwise ordered by the Commission.

(Feb. 4, 1887, ch. 104, pt. II, § 206, as added Aug. 9, 1935, ch. 498, 49 Stat. 551, and amended June 29, 1938, ch. 811, § 8, 52 Stat. 1238; Sept. 18, 1940, ch. 722, title I, § 20(e), 54 Stat. 923; Sept. 1, 1950, ch. 835, § 2, 64 Stat. 574; July 12, 1960, Pub. L. 86-615, § 1, 74 Stat. 382; Oct. 15, 1962, Pub. L. 87-805, §§ 1, 2, 76 Stat. 911.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(6), (7)(A), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 301 et seq.) and chapters 1, 12, 13, and 19 (§§ 1 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

For second proviso of par. (1) of subsec. (a), as in effect immediately before Oct. 15, 1962, referred to in subsec. (a)(7)(A), (B), see 1962 Amendment note below.

AMENDMENTS

1962—Subsec. (a)(1). Pub. L. 87-805, § 1, deleted at the end of the par. "*And provided further,* That this paragraph shall not be so construed as to require any such carrier lawfully engaged in operation solely within any State to obtain from the Commission a certificate authorizing the transportation by such carrier of passengers or property in interstate or foreign commerce between places within such State if there be a board in such State having authority to grant or approve such certificates and if such carrier has obtained such certificate from such board. Such transportation shall, however, be otherwise subject to the jurisdiction of the Commission under this chapter."

Subsec. (a)(6), (7). Pub. L. 87-805, § 2, added pars. (6) and (7).

1960—Subsec. (a). Pub. L. 86-615 added pars. (4) and (5).

1950—Subsec. (a). Act Sept. 1, 1950, inserted "(1)" after "(a)" and added subpars. (2) and (3).

1940—Subsec. (a). Act Sept. 18, 1940, inserted "and has so operated since that time" preceding "except in either instance", in first sentence.

1938—Subsec. (a). Act June 29, 1938, inserted exception clause at beginning of subsec.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 4 of act Sept. 1, 1950, provided in part that the amendment of subsec. (a) by section 2 of Act Sept. 1, 1950, shall take effect on Sept. 1, 1950.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, upon issuance of Proc. No. 3269, eff. Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 303, 308, 312, 322, 1655 of this title.

§ 307. Issuance of certificate

(a) Issuance authorized to qualified applicants for regular routes and between fixed termini

Subject to section 310 of this title, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied: *Provided, however,* That no such certificate shall be issued to any common carrier of passengers by motor vehicle for operations over other than a regular route or routes, and between fixed termini, except as such carriers may be authorized to engage in special or charter operations.

(b) Certificate not to confer proprietary or property rights in highway

No certificate issued under this chapter shall confer any proprietary or property rights in the use of the public highways.

(Feb. 4, 1887, ch. 104, pt. II, § 207, as added Aug. 9, 1935, ch. 498, 49 Stat. 551.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 306, 308, 1655 of this title.

§ 308. Terms and conditions of certificate

(a) Specification of routes and termini; extension of routes; restriction on additions to equipment

Any certificate issued under section 306 or 307 of this title shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate; and there shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the Commission under section 304(a)(1) and (6) of this title: *Provided, however,* That no terms, conditions, or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demands of the public shall require.

(b) Deviation from route

A common carrier by motor vehicle operating under any such certificate may occasionally deviate from the route over which, and/or the fixed termini between which, it is authorized to operate under the certificate, under such general or special rules and regulations as the Commission may prescribe.

(c) Transportation of special or chartered parties; date of filing or reissuance of certificate

Any common carrier by motor vehicle transporting passengers under a certificate issued under this part pursuant to an application filed on or before January 1, 1967, or under any reissuance of the operating rights contained in such certificate, may transport in interstate or foreign commerce to any place special or chartered parties under such rules and regulations as the Commission shall have prescribed.

(d) Transportation of baggage, newspapers, express, or mail

A certificate for the transportation of passengers may include authority to transport in the same vehicle with the passengers, newspapers, baggage of passengers, express, or mail, or to transport baggage of passengers in a separate vehicle.

(Feb. 4, 1887, ch. 104, pt. II, § 208, as added Aug. 9, 1935, ch. 498, 49 Stat. 552, and amended Nov. 10, 1966, Pub. L. 89-804, 80 Stat. 1521.)

AMENDMENTS

1966—Subsec. (c). Pub. L. 89-804 limited transportation of special or chartered parties, under rules and regulations the Commission has prescribed, where the certificate of a common carrier was issued under this part pursuant to an application filed on or before January 1, 1967, or where there has been a reissuance of the operating rights contained in such certificate.

§ 309. Contract carriers by motor vehicle

(a) Permit to operate; carriers in bona fide operation on July 1, 1935; laws relating to national parks and monuments unaffected; traffic moving to and from Territories and possessions; "grandfather" provisions

(1) Except as otherwise provided in this section and in section 310a of this title, no person shall engage in the business of a contract carrier by motor vehicle in interstate or foreign commerce on any public highway or within any reservation under the exclusive jurisdiction of the United States unless there is in force with respect to such carrier a permit issued by the Commission, authorizing such person to engage in such business: *Provided,* That, subject to section 310 of this title, if any such carrier or a predecessor in interest was in bona fide operation as a contract carrier by motor vehicle on July 1, 1935, over the route or routes or within

the territory for which application is made and has so operated since that time, or, if engaged in furnishing seasonal service, only, was in bona fide operation on July 1, 1935, during the season ordinarily covered by its operations, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such permit, without further proceedings, if application for such permit was made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after October 1, 1935, and if such carrier was registered on July 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered in connection with the issuance of such permit. Otherwise the application for such permit shall be decided in accordance with the procedure provided for in paragraph (b) of this section and such permit shall be issued or denied accordingly. Pending determination of any such application the continuance of such operation shall be lawful. Any person, not included within the foregoing provisions of this paragraph, who or which is engaged in transportation as a contract carrier by motor vehicle on October 1, 1935, may continue such operation for a period of one hundred and twenty days thereafter without a permit and, if application for such permit is made within such period, the carrier may, under such regulations as the Commission shall prescribe, continue such operation until otherwise ordered by the Commission: *Provided further,* That nothing in this chapter shall be construed to repeal, amend, or otherwise modify any act or acts relating to national parks and national monuments under the administrative jurisdiction of the Secretary of the Interior, or to withdraw such authority or control as may by law be held by the Secretary of the Interior with respect to the admission and operation of motor vehicles in any national park or national monument of the United States.

(2) Unless otherwise specifically indicated in such permit, the holder of any permit heretofore issued under this chapter, or hereafter issued under this chapter pursuant to an application filed on or before September 1, 1950, authorizing the holder thereof to engage as a contract carrier by motor vehicle in the transportation in interstate or foreign commerce of passengers or property over any route or routes or within any territory, may without making application under this chapter engage, to the same extent and subject to the same terms, conditions, and limitations, as a contract carrier by motor vehicle in the transportation of passengers or property, as the case may be, over such route or routes or within such territory, in commerce between places in the United States and places in Territories or possessions of the United States.

(3) Subject to the provisions of section 310 of this title, if any person (or its predecessor in interest) was in bona fide operation on March 1, 1950, over any route or routes or within any territory, as a contract carrier engaged in the transportation of passengers or property by motor vehicle in commerce between any place in the United States and any place in a Territory or possession of the United States, and has so operated since that time (or if engaged in furnishing seasonal service only, was in bona fide operation on March 1, 1950, during the season ordinarily covered by its operations and has so operated since that time), except in either instance as to interruptions of service over which such applicant or its predecessor in interest had no control, the Commission shall issue a permit authorizing such operations without further proceedings, if application for such permit is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after September 1, 1950. Pending the determination of any such application, the continuance of such operation without a permit shall be lawful. Any carrier which, on September 1, 1950, is engaged in an operation of the character specified in the foregoing provisions of this subparagraph, but was not engaged in such operation on March 1, 1950, may under such regulations as the Commission shall prescribe, if application for a permit is made to the Commission within one hundred and twenty days after September 1, 1950, continue such operation without a permit pending the determination of such application in accordance with subsection (b) of this section.

(4) Subject to the provisions of section 310 of this title, any contract carrier by motor vehicle which, on July 12, 1960, is the holder of a permit or permits described in paragraph (2) of this subsection or issued under paragraph (3) of this subsection or under subsection (b) of this section, authorizing transportation by motor vehicle between places in the United States of passengers or property in commerce between the United States and the Territory of Alaska, and on August 26, 1958, it or its predecessor in interest was engaged in the transportation of passengers or property as a contract carrier by motor vehicle between places in the United States and places in Alaska, and such operations have been continued since that time (or if engaged in the furnishing of seasonal service only, was engaged in such operations in the year 1958 during the season ordinarily covered by its operations, and such operations have not been discontinued), except in either instance as to interruptions of service over which the carrier or its predecessor in interest had no control, shall be issued a permit authorizing transportation to or from the points or areas in Alaska served by it, from or to all points in the other States of the United States designated in the above-mentioned permit or permits held by the carrier, of passengers or the class or classes of commodities specified therein, to the extent that under the said permit or permits the carrier, prior to the date of admission of Alaska into the Union, was authorized to perform within the United States all transportation required for through motor vehicle transportation by the carrier to or from places in the Territory of Alaska, without further proceedings, if application for such permit is made to the Commission as provided herein on or before December 31, 1960. Pending the determination of such application, the continuance of such operation without a permit shall be lawful. Applications for

permits under this paragraph shall be made in writing to the Commission and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as shall be required by the Commission.

(5) Subject to the provisions of section 310 of this title, if any person (or his predecessor in interest) was in operation on August 26, 1958, over any route or routes, or in any area or areas, as a contract carrier engaged in the transportation in interstate or foreign commerce of passengers or property by motor vehicle between places in the Territory of Alaska, and has so operated in Alaska since that time (or if engaged in furnishing seasonal service only, was engaged in such operations in the year 1958 during the season ordinarily covered by its operations and such operations have not been discontinued), except in either instance as to interruptions of service over which such person or his predecessor in interest had no control, a permit shall be issued authorizing such operations without further proceedings, if application for such permit is made as provided herein on or before December 31, 1960. Pending the determination of any such application, the continuance of such operation without a permit shall be lawful. Applications for permits under this paragraph shall be made to the Commission in writing, and in such form, contain such information, and be accompanied by proof of service upon such interested parties as the Commission shall require.

(b) Application for permit; form and contents; issuance of permit; terms and conditions

Applications for such permits shall be made to the Commission in writing, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission may, by regulations, require. Subject to section 310 of this title, a permit shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the application, if it appears from the applications or from any hearing held thereon, that the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle, and to conform to the provisions of this chapter and the lawful requirements, rules, and regulations of the Commission thereunder, and that the proposed operation, to the extent authorized by the permit, will be consistent with the public interest and the national transportation policy declared in this Act; otherwise such application shall be denied. In determining whether issuance of a permit will be consistent with the public interest and the national transportation policy declared in this Act, the Commission shall consider the number of shippers to be served by the applicant, the nature of the service proposed, the effect which granting the permit would have upon the services of the protesting carriers and the effect which denying the permit would have upon the applicant and/or its shipper and the changing character of that shipper's requirements. The Commission shall specify in the permit the business of the contract carrier covered thereby and the scope thereof, and it shall attach to it at the time of issuance, and from time to time thereafter, such reasonable terms, conditions, and limitations, consistent with the character of the holder as a contract carrier, including terms, conditions and limitations respecting the person or persons and the number or class thereof for which the contract carrier may perform transportation service, as may be necessary to assure that the business is that of a contract carrier and within the scope of the permit, and to carry out with respect to the operation of such carrier the requirements established by the Commission under section 304(a)(2) and (6) of this title: *Provided*, That within the scope of the permit and any terms, conditions or limitations attached thereto, the carrier shall have the right to substitute or add to its equipment and facilities as the development of its business may require: *Provided further*, That no terms, conditions or limitations shall be imposed in any permit issued on or before August 22, 1957 which shall restrict the right of the carrier to substitute similar contracts within the scope of such permit; or to add contracts within the scope of such permit unless upon investigation on its own motion or petition of an interested carrier the Commission shall find that the scope of the additional operations of the carrier is not confined to those of a contract carrier as defined in section 303(a)(15) of this title, as in force on and after August 22, 1957.

(Feb. 4, 1887, ch. 104, pt. II, § 209, as added Aug. 9, 1935, ch. 498, 49 Stat. 552, and amended June 29, 1938, ch. 811, § 9, 52 Stat. 1238; Sept. 18, 1940, ch. 722, title I, § 16, 54 Stat. 919; Sept. 1, 1950, ch. 835, § 3, 64 Stat. 575; Aug. 22, 1957, Pub. L. 85-163, § 2, 71 Stat. 411; July 12, 1960, Pub. L. 86-615, § 2, 74 Stat. 383.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 301 et seq.) and chapters 1, 12, 13, and 19 (§§ 1 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

For the national transportation policy declared in this Act, referred to in subsec. (b), see National Transportation Policy note preceding section 301 of this title.

AMENDMENTS

1960—Subsec. (a). Pub. L. 86-615 added pars. (4) and (5).

1957—Subsec. (b). Pub. L. 85-163 required that when Commission issues permits, it consider number of shippers to be served, nature of service proposed, and effect of granting or denying permit, and provided that no terms, conditions, or limitations be imposed in a permit issued on or after August 22, 1957 which would restrict the right to substitute or add similar contracts within its scope, unless the Commission finds that the scope of the additional operations is not confined to those of a contract carrier as defined in section 303(a)(15) of this title.

1950—Subsec. (a). Act Sept. 1, 1950, inserted "(1)" after "(a)" and added subpars. (2) and (3).

1940—Subsec. (b). Act Sept. 18, 1940, inserted provision relating to the national transportation policy declared in the Interstate Commerce Act.

1938—Subsec. (a). Act June 29, 1938, inserted "Except as otherwise provided in this section and in

section 310a of this title" at beginning of first sentence.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 4 of act Sept. 1, 1950, provided in part that the amendment of subsec. (a) by section 3 of act Sept. 1, 1950, shall take effect on Sept. 1, 1950.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, upon issuance of Proc. No. 3269, eff. Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 312, 322, 1655 of this title.

§ 310. Dual operations

Unless, for good cause shown, the Commission shall find, or shall have found, that both a certificate and a permit may be so held consistently with the public interest and with the national transportation policy declared in this Act—

(1) no person, or any person controlling, controlled by, or under common control with such person, shall hold a certificate as a common carrier authorizing operation for the transportation of property by motor vehicle over a route or within a territory, if such person, or any such controlling person, controlled person, or person under common control, holds a permit as a contract carrier authorizing operation for the transportation of property by motor vehicle over the same route or within the same territory; and

(2) no person, or any person controlling, controlled by, or under common control with such person, shall hold a permit as a contract carrier authorizing operation for the transportation of property by motor vehicle over a route or within a territory, if such person, or any such controlling person, controlled person, or person under common control, holds a certificate as a common carrier authorizing operation for the transportation of property by motor vehicle over the same route or within the same territory.

(Feb. 4, 1887, ch. 104, pt. II, § 210, as added Aug. 9, 1935, ch. 498, 49 Stat. 554, and amended Sept. 18, 1940, ch. 722, title I, §§ 16, 21(a), 54 Stat. 919, 923.)

REFERENCES IN TEXT

For the national transportation policy declared in this act, referred to in provision preceding par. (1), see National Transportation Policy note preceding section 301 of this title.

This Act, referred to in provision preceding par. (1), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 301 et seq.) and chapters 1, 12, 13, and 19 (§§ 1 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

AMENDMENTS

1940—Act Sept. 18, 1940, inserted provisions relating to persons controlling, controlled by, or under common control.

CROSS REFERENCES

Control defined, see section 1(3) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 306, 307, 308, 309, 312 of this title.

§ 310a. Temporary authority

(a) Immediate and urgent need; time limitation

To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a common carrier or a contract carrier by motor vehicle, as the case may be. Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the Commission shall specify, but for not more than an aggregate of one hundred and eighty days, and shall create no presumption that corresponding permanent authority will be granted thereafter.

(b) Consolidation and merger; time limitation

Pending the determination of an application filed with the Commission for approval of a consolidation or merger of the properties of two or more motor carriers, or of a purchase, lease, or contract to operate the properties of one or more motor carriers, the Commission may, in its discretion, and without hearings or other proceedings, grant temporary approval, for a period not exceeding one hundred and eighty days, of the operation of the motor carrier properties sought to be acquired by the person proposing in such pending application to acquire such properties, if it shall appear that failure to grant such temporary approval may result in destruction of or injury to such motor carrier properties sought to be acquired, or to interfere substantially with their future usefulness in the performance of adequate and continuous service to the public.

(c) Applicability of provisions of this chapter; rules and regulations of Commission

Transportation service rendered under such temporary authority shall be subject to all applicable provisions of this chapter and to the rules, regulations, and requirements of the Commission thereunder.

(Feb. 4, 1887, ch. 104, pt. II, § 210a, as added June 29, 1938, ch. 811, § 10, 52 Stat. 1238, and amended Sept. 18, 1940, ch. 722, title I, § 21(b), 54 Stat. 923; Mar. 27, 1942, ch. 199, title I, § 102, 56 Stat. 177.)

AMENDMENTS

1942—Subsec. (a). Act Mar. 27, 1942, struck out "but for not more than an aggregate of one hundred and eighty days" following "specify" in second sentence. This amendment expired on Mar. 31, 1947, by virtue of section 1501 of act Mar. 27, 1942, as amended, and the words were restored. For further details, see Expiration of Amendment note set out below.

1940—Subsec. (b). Act Sept. 18, 1940, struck out "as contemplated in section 313(a) of this title" following "one or more motor carriers,".

EXPIRATION OF AMENDMENT BY ACT MARCH 27, 1942

Act Mar. 27, 1942, which amended subsec. (a) by striking out the words "but for not more than an ag-

gregate of one hundred and eighty days" following "specify" in the second sentence, expired on Mar. 31, 1947, by virtue of section 1501 of act Mar. 27, 1942, as amended (60 Stat. 345; 50 U.S.C., App. 645).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 306, 309, 312, 1655 of this title.

§ 311. Motor transportation brokers

(a) License required

No person shall for compensation sell or offer for sale transportation subject to this chapter or shall make any contract, agreement, or arrangement to provide, procure, furnish, or arrange for such transportation or shall hold himself or itself out by advertisement, solicitation, or otherwise as one who sells, provides, procures, contracts, or arranges for such transportation, unless such person holds a broker's license issued by the Commission to engage in such transactions: *Provided, however,* That no such person shall engage in transportation subject to this chapter unless he holds a certificate or permit as provided in this chapter. In the execution of any contract, agreement, or arrangement to sell, provide, procure, furnish, or arrange for such transportation, it shall be unlawful for such person to employ any carrier by motor vehicle who or which is not the lawful holder of an effective certificate or permit issued as provided in this chapter: *And provided further,* That the provisions of this paragraph shall not apply to any carrier holding a certificate or a permit under the provisions of this chapter or to any bona fide employee or agent of such motor carrier, so far as concerns transportation to be furnished wholly by such carrier or jointly with other motor carriers holding like certificates or permits, or with a common carrier by railroad, express, or water.

(b) Issuance of license; brokers in operation prior to enactment of section

A brokerage license shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent to be authorized by the license, is, or will be consistent with the public interest and the national transportation policy declared in this Act; otherwise such application shall be denied. Any broker in operation on October 1, 1935 may continue such operation for a period of one hundred and twenty days thereafter without a license, and if application for such license is made within such period, the broker may, under such regulations as the Commission shall prescribe, continue such operations until otherwise ordered by the Commission.

(c) Rules and regulations; bond or other security required

The Commission shall prescribe reasonable rules and regulations for the protection of travelers or shippers by motor vehicle, to be observed by any person holding a brokerage license, and no such license shall be issued or remain in force unless such person shall have furnished a bond or other security approved by the Commission, in such form and amount as will insure financial responsibility and the supplying of authorized transportation in accordance with contracts, agreements, or arrangements therefor.

(d) Inspection of accounts, records, etc.

The Commission and its special agents and examiners shall have the same authority as to accounts, reports, and records, including inspection and preservation thereof, of any person holding a brokerage license issued under the provisions of this section, that they have under this chapter with respect to motor carriers subject thereto.

(Feb. 4, 1887, ch. 104, pt. II, § 211, as added Aug. 9, 1935, ch. 498, 49 Stat. 554, and amended Sept. 18, 1940, ch. 722, title I, § 16, 54 Stat. 919.)

REFERENCES IN TEXT

For the national transportation policy declared in this act, referred to in subsec. (b), see National Transportation Policy note preceding section 301 of this title.

This Act, referred to in subsec. (b), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 301 et seq.) and chapters 1, 12, 13, and 19 (§§ 1 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

AMENDMENTS

1940—Subsec. (b). Act Sept. 18, 1940, substituted "the national transportation policy declared in this Act" for "the policy declared in section 302 (a) of this title".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 312, 322, 1655 of this title.

§ 312. Suspension, revocation, or change in certificates, permits, and licenses

(a) Willful failure to comply; notice and hearing

Certificates, permits, and licenses shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as herein provided. Any such certificate, permit, or license may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may upon complaint, or on the Commission's own initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for willful failure to comply with any provision of this chapter, or with any lawful order, rule, or regulation promulgated thereunder, or with any term, condition, or limitation of such certificate, permit, or license: *Provided, however,* That no such certificate, permit, or license shall be revoked (except upon application of the holder) unless the holder thereof willfully fails to comply, within a reasonable time, not less than thirty days, to be fixed by the Commission, with a lawful order made as provided in section 304(c) of this title, commanding obedience to the provision of this chapter, or to the rule or regulation thereunder, or to the term, condition, or limitation of such certificate, permit, or license found by the

Commission to have been violated by such holder: *And provided further,* That the right to engage in transportation in interstate or foreign commerce by virtue of any certificate, permit, license, or any application filed pursuant to the provisions of sections 306, 309, or 311 of this title, or by virtue of the second proviso of section 306(a) of this title or temporary authority under section 310a of this title, may be suspended by the Commission, upon reasonable notice of not less than fifteen days to the carrier or broker, but without hearing or other proceedings, for failure to comply, and until compliance, with the provisions of sections 311(c), 317(a), or 318(a) of this title or with any lawful order, rule, or regulation of the Commission promulgated thereunder.

(b) Transfer

Except as provided in section 5 of this title, any certificate or permit may be transferred, pursuant to such rules and regulations as the Commission may prescribe.

(c) Issuance of certificate of public convenience and necessity in lieu of permit

The Commission shall examine each outstanding permit and may within one hundred and eighty days after August 22, 1957 institute a proceeding either upon its own initiative, or upon application of a permit holder actually in operation or upon complaint of an interested party, and after notice and hearing revoke a permit and issue in lieu thereof a certificate of public convenience and necessity, if it finds, first, that any person holding a permit whose operations on August 22, 1957 do not conform with the definition of a contract carrier in section 303(a)(15) of this title as in force on and after August 22, 1957; second, are those of a common carrier; and, third, are otherwise lawful. Such certificate so issued shall authorize the transportation, as a common carrier, of the same commodities between the same points or within the same territory as authorized in the permit.

(Feb. 4, 1887, ch. 104, pt. II, § 212, as added Aug. 9, 1935, ch. 498, 49 Stat. 555, and amended June 29, 1938, ch. 811, § 11, 52 Stat. 1238; Sept. 18, 1940, ch. 722, title I, § 21(c), (d), 54 Stat. 924; Aug. 22, 1957, Pub. L. 85-163, § 1(3), 71 Stat. 411; Oct. 15, 1966, Pub. L. 89-670, § 8(d), 80 Stat. 943.)

REFERENCES IN TEXT

The second proviso of section 306(a) of this title, referred to in subsec. (a), probably means the second proviso of section 306(a)(1), which was deleted by Pub. L. 87-805, Oct. 15, 1962, § 1, 76 Stat. 911, and is now covered by 306(a)(6), (7) of this title.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-670 struck out provisions naming the Commission as the sole source for the promulgation of the orders, rules, and regulations the willful violation of which may serve as the basis for the suspension, change, revocation, or transfer of certificates, permits, or licenses by the Commission.

1957—Subsec. (c). Pub. L. 85-163 added subsec. (c).

1940—Subsec. (a). Act Sept. 18, 1940, § 21(c), substituted "section 304(c) of this title" for "section 304(d) of this title".

Subsec. (b). Act Sept. 18, 1940, § 21(d), substituted "section 5" for "section 313".

1938—Subsec. (a). Act June 29, 1938, added "suspended or" in the first sentence, substituted "thirty days" for "ninety days" in the first proviso, and added the second proviso.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-670 effective 90 days after the Secretary of Transportation first takes office, or on any earlier date after Oct. 15, 1966, as the President prescribes and publishes in the Federal Register, see section 15(a) of Pub. L. 89-670, set out as an Effective Date note under section 1651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1655 of this title.

§ 313. Validity and perfection of certain security interests in motor vehicles

(a) Definitions

As used in this section the term—

(1) "debtor carrier" means every common or contract carrier having a certificate of public convenience and necessity or permit issued under this Act who owes payment or performance of an obligation secured by a security interest.

(2) "home State" means the State of the United States, or the District of Columbia, where the principal place of business of the debtor carrier is located.

(3) "lien creditor" means a creditor who has acquired a lien on the motor vehicle involved by attachment, levy, or the like, and includes an assignee for benefit of creditors from the time of assignment, a trustee in bankruptcy from the date of the filing of the petition in bankruptcy, and a receiver in equity from the time of his appointment.

(4) "perfection" in connection with a security interest means the taking of the steps (including but not limited to public filing, recording, notation on a certificate of title, or possession of collateral by the secured party), or the existence of the facts, required by applicable law to make a security interest enforceable against general creditors and subsequent lien creditors of a debtor carrier, but does not include any reference to compliance with requirements, if any, as to capacity, authority, form of instruments, value, consideration, good faith, and other matters which go only to the creation of a valid security interest as between the debtor carrier and the secured party.

(5) "security interest" means an interest (including but not limited to an interest created by a conditional sale contract, mortgage, equipment trust, or other lien or title retention contract, or lease) in a motor vehicle owned by, or the possession and use of which vehicle has been transferred to, a debtor carrier, which interest secures payment or performance of an obligation of the debtor carrier.

(6) "motor vehicle" means any truck having a rated capacity (gross vehicle weight) of ten thousand pounds or more; any highway tractor having a rated capacity (gross combination weight) of ten thousand pounds or more; or any property-carrying trailer or semitrailer having one or more load-carrying axles of ten thousand pounds or more; or any motor bus

having a seating capacity of ten persons or more.

(7) "purchaser" means a person who takes by sale, or who takes or retains a security interest in, a motor vehicle.

(b) Indication on certificate of title of interest

If a certificate of title is issued for a motor vehicle under a statute of a jurisdiction which requires or permits indication on a certificate of title of a security interest in a motor vehicle, and if a security interest is so indicated on the certificate, then the security interest is perfected in all jurisdictions against all general creditors of, and subsequent lien creditors of, and all subsequent purchasers from, the debtor carrier.

(c) Certificate of title not issued; public filing or recording

In the case of any security interest in a motor vehicle for which a certificate of title has not been issued, (1) if the law of the home State requires or permits public filing, or recording, of, or with respect to, such security interest, and (2) if there has been such a public filing or recording, then such security interest is perfected in all jurisdictions as to all general creditors of, and subsequent lien creditors of, and all subsequent purchasers from, the debtor carrier.

(d) Certificate of title not issued; no public filing or recording

In the case of any security interest in a motor vehicle for which a certificate of title has not been issued, and which security interest cannot be perfected under subsection (c) of this section, perfection of such a security interest shall be governed by the law of the home State, and if such security interest has been perfected as to general creditors and subsequent lien creditors under the law of the home State (including the conflict of laws rules), then such security interest is perfected in all jurisdictions as to all general creditors of, and subsequent lien creditors of, and all subsequent purchasers from, the debtor carrier.

(e) Interest perfected prior to January 1, 1959

This section shall not affect any security interest perfected before January 1, 1959.

(Feb. 4, 1887, ch. 104, pt. II, § 213, as added Aug. 23, 1958, Pub. L. 85-728, § 1, 72 Stat. 812.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(1) means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 301 et seq.) and chapters 1, 12, 13, and 19 (§§ 1 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

PRIOR PROVISIONS

A prior section 213 of act Feb. 4, 1887, ch. 104 pt. II, as added Aug. 9, 1935, ch. 498, 49 Stat. 555, and amended June 29, 1938, ch. 811, §§ 12-14, 52 Stat. 1239, 1240, which was classified to this section, and related to consolidation, merger, and acquisition of control, was repealed by act Sept. 18, 1940, ch. 722, title I, § 21(e), 54 Stat. 924. See now section 5 of this title.

EFFECTIVE DATE

Section 2 of Pub. L. 85-728 provided that: "The amendment made by the first section of this Act [adding this section] shall take effect on January 1, 1959."

§ 314. Issuance of securities

Common or contract carriers by motor vehicle, corporations organized for the purpose of engaging in transportation as such carriers, and corporations authorized by order of the Commission to acquire control of any such carrier, or two or more such carriers, shall be subject to the provisions of paragraphs (2) to (11), inclusive, of section 20a of this title (including penalties applicable in cases of violations thereof): *Provided, however,* That said provisions shall not apply to such carriers or corporations where the value of capital stock or principal amount of other securities to be issued, together with the value of capital stock and principal amount of other securities then outstanding, does not exceed $1,000,000, nor to the issuance of notes of a maturity of two years or less and aggregating not more than $200,000, which notes aggregating such amount including all outstanding obligations maturing in two years or less may be issued without reference to the percentage which said amounts bear to the total amount of outstanding securities. In the case of capital stock having no par value, the value thereof for the purpose of this section shall be the fair market value as of the date of its issue; and in the case of capital stock having par value, the value for the purpose of this section shall be the fair market value as of the date of its issue, or the par value, whichever is the greater: *Provided further,* That the provisions of this section shall not apply to the United States or any instrumentality thereof, the District of Columbia, or any instrumentality thereof, any State of the United States or political subdivision or municipal corporation thereof, or any instrumentality of one or more States, political subdivisions thereof, or municipal corporations.

(Feb. 4, 1887, ch. 104, pt. II, § 214, as added Aug. 9, 1935, ch. 498, 49 Stat. 557, and amended June 29, 1938, ch. 811, § 15, 52 Stat. 1240; Sept. 18, 1940, ch. 722, title I, § 22(a), 54 Stat. 924; July 10, 1952, ch. 648, 66 Stat. 542; Sept. 7, 1957, Pub. L. 85-309, 71 Stat. 631; July 24, 1965, Pub. L. 89-86, § 2, 79 Stat. 263; Feb. 5, 1976, Pub. L. 94-210, title III, § 308(a)(3), 90 Stat. 57.)

AMENDMENTS

1976—Pub. L. 94-210 struck out of section 214 of act Feb. 4, 1887, cited as a credit to this section, a proviso that contained an amendment of section 3(a)(6) of the Securities Act, 1933 (15 U.S.C. 77c(a)(6)). This proviso, which was added by 52 Stat. 1240, had been omitted from the text of this section by the codifiers.

1965—Pub. L. 89-86 added proviso prohibiting application of this section to the United States or any instrumentality thereof, the District of Columbia, or any instrumentality thereof, and any state, political subdivision or municipal corporation thereof, or by any instrumentality of one or more states, political subdivisions thereof, or municipal corporations.

1957—Pub. L. 85-309 substituted in proviso of first sentence the words "value of capital stock or principal amount of other securities to be issued, together with the value of capital stock and principal amount of other securities then outstanding" for "par value of the securities to be issued, together with the par value of the securities then outstanding" and included in

second sentence provisions relating to the valuation of capital stock having par value.

1952—Act July 10, 1952, increased the amounts of securities which may be issued without requiring approval by Commission.

1940—Act Sept. 18, 1940, substituted "of the Commission" for "entered under section 313(a) of this title" following "authorized by order".

1938—Act June 29, 1938, reenacted section without change.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-210 to take effect on the 60th day after Feb. 5, 1976, but not to apply to any bona fide offering of a security made by the issuer, or by or through an underwriter, before such 60th day, see section 308(d)(1) of Pub. L. 94-210, set out as an Effective Date of 1976 Amendment note under section 77c of Title 15, Commerce and Trade.

CROSS REFERENCES

Noncarrier deemed carrier upon acquiring control, see section 5 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5 of this title; title 15 sections 77c, 80a-3.

§ 315. Security for protection of public

No certificate or permit shall be issued to a motor carrier or remain in force, unless such carrier complies with such reasonable rules and regulations as the Commission shall prescribe governing the filing and approval of surety bonds, policies of insurance, qualifications as a self-insurer or other securities or agreements, in such reasonable amount as the Commission may require, conditioned to pay, within the amount of such surety bonds, policies of insurance, qualifications as a self-insurer or other securities or agreements, any final judgment recovered against such motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance, or use of motor vehicles under such certificate or permit, or for loss or damage to property of others. The Commission may, in its discretion and under such rules and regulations as it shall prescribe, require any such common carrier to file a surety bond, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in a sum to be determined by the Commission, to be conditioned upon such carrier making compensation to shippers and/or consignees for all property belong[1] to shippers and/or consignees, and coming into the possession of such carrier in connection with its transportation service. Any carrier which may be required by law to compensate a shipper and/or consignee for any loss, damage, or default for which a connecting motor common carrier is legally responsible shall be subrogated to the rights of such shipper and/or consignee under any such bond, policies of insurance, or other securities or agreements, to the extent of the sum so paid. The Commission may prescribe, with respect to motor carriers operating within the United States in the course of engaging in transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country, such reasonable regulations concerning security for the protection of the public as the Commission is authorized, by this section, to prescribe for other motor carriers.

(Feb. 4, 1887, ch. 104, pt. II, § 215, as added Aug. 9, 1935, ch. 498, 49 Stat. 557, and amended July 22, 1954, ch. 563, § 2, 68 Stat. 526.)

AMENDMENTS

1954—Act July 22, 1954, added sentence authorizing regulations with respect to motor carriers operating within the United States in the course of engaging in transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country.

CROSS REFERENCES

Foreign commerce defined, see section 303 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 303 of this title.

§ 316. Rates, fares and charges

(a) Duty to establish reasonable rates, etc.; service and equipment; rules and regulations; reasonable divisions of joint fares

It shall be the duty of every common carrier of passengers by motor vehicle to establish reasonable through routes with other such common carriers and to provide safe and adequate service, equipment, and facilities for the transportation of passengers in interstate or foreign commerce; to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable regulations and practices relating thereto, and to the issuance, form, and substance of tickets, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the transportation of passengers in interstate or foreign commerce; and in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

(b) Rates, facilities for carriers of property

It shall be the duty of every common carrier of property by motor vehicle to provide safe and adequate service, equipment, and facilities for the transportation of property in interstate or foreign commerce; to establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto and to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property in interstate or foreign commerce.

(c) Through routes and joint rates; "common carriers by water"

Common carriers of property by motor vehicle may establish reasonable through routes and joint rates, charges, and classifications with other such carriers or with common carriers by railroad and/or express and/or water; and common carriers of passengers by motor vehicle may establish reasonable through routes and joint rates, fares, or charges with common car-

[1] So in original. Probably should read "belonging".

riers by railroad and/or water. In case of such joint rates, fares, or charges it shall be the duty of the carriers parties thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers. As used in this subsection, the term "common carriers by water" includes water common carriers subject to the Shipping Act, 1916, as amended, [46 U.S.C. 801 et seq.], or the Intercoastal Shipping Act of 1933, as amended [46 U.S.C. 843 et seq.] (including persons who hold themselves out to transport goods by water but who do not own or operate vessels) engaged in the transportation of property in interstate or foreign commerce between Alaska or Hawaii on the one hand, and, on the other, the other States of the Union, and through routes and joint rates so established and all classifications, regulations, and practices in connection therewith shall be subject to the provisions of this chapter.

(d) Undue preferences or prejudices prohibited

All charges made for any service rendered or to be rendered by any common carrier by motor vehicle engaged in interstate or foreign commerce in the transportation of passengers or property as aforesaid or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. It shall be unlawful for any common carrier by motor vehicle engaged in interstate or foreign commerce to make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, gateway, locality, region, district, territory, or description of traffic, in any respect whatsoever; or to subject any particular person, port, gateway, locality, region, district, territory, or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this subsection shall not be construed to apply to discriminations, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

(e) Complaints to and investigation by Commission; power of Commission to fix reasonable rates, regulations, etc.

Any person, State board, organization, or body politic may make complaint in writing to the Commission that any such rate, fare, charge, classification, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this section or of section 317 of this title. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the Commission shall be of the opinion that any individual or joint rate, fare, or charge, demanded, charged, or collected by any common carrier or carriers by motor vehicle or by any common carrier or carriers by motor vehicle in conjunction with any common carrier or carriers by railroad and/or express, and/or water for transportation in interstate or foreign commerce, or any classification, rule, regulation, or practice whatsoever of such carrier or carriers affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or undly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum, or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful classification, rule, regulation, or practice thereafter to be made effective and the Commission shall, whenever deemed by it to be necessary or desirable in the public interest, after hearing, upon complaint or upon its own initiative without a complaint, establish through routes and joint rates, fares, charges, regulations, or practices, applicable to the transportation of passengers by common carriers by motor vehicle, or the maxima or minima, or maxima and minima, to be charged, and the terms and conditions under which such through routes shall be operated: *Provided, however,* That nothing in this chapter shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever.

(f) Commission empowered to establish just division of joint rates

Whenever, after hearing, upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation in interstate or foreign commerce of passengers or property by common carriers by motor vehicle or by such carriers in conjunction with common carriers by railroad and/or express, and/or water are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. The order of the Commission may require the adjustment of divisions between the carriers, in accordance with the order, from the date of filing the complaint or entry of order of investigation or such other date subsequent as the Commission finds justified and, in the case of joint rates prescribed by the Commission, the order as to divisions may be made effective as a part of the original order.

(g) New rates; determination of fairness by Commission; suspension

Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, charge, or classification for the transportation of passengers or property by a common carrier or carriers by motor vehicle,

or by any such carrier or carriers in conjunction with a common carrier or carriers by railroad and/or express, and/or water in interstate or foreign commerce, or any rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the Commission is authorized and empowered upon complaint of any interested party or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, or charge, or such rule, regulation, or practice, and pending such hearing and the decision thereon the Commission, by filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, or charge, or such rule, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after hearing, whether completed before or after the rate, fare, charge, classification, rule, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding instituted after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, or charge, or classification, rule, regulation, or practice, shall go into effect at the end of such period: *Provided*, That this paragraph shall not apply to any initial schedule or schedules filed on or before July 31, 1938, by any such carrier in bona fide operation on October 1, 1935. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable.

(h) Good will, earning power or certificate inadmissible in proceedings to determine rates

In any proceeding to determine the justness or reasonableness of any rate, fare, or charge of any such carrier, there shall not be taken into consideration or allowed as evidence or elements of value of the property of such carrier, either good will, earning power, or the certificate under which such carrier is operating; and in applying for and receiving a certificate under this chapter any such carrier shall be deemed to have agreed to the provisions of this paragraph, on its own behalf and on behalf of all transferees of such certificate.

(i) Transportation needs and fair return considered in determining rates, etc.

In the exercise of its power to prescribe just and reasonable rates, fares, and charges for the transportation of passengers or property by common carriers by motor vehicle, and classifications, regulations, and practices relating thereto, the Commission shall give due consideration, among other factors, to the inherent advantages of transportation by such carriers; to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable such carriers, under honest, economical, and efficient management, to provide such service.

(j) Effect on remedy or right of action

Nothing in this section shall be held to extinguish any remedy or right of action not inconsistent herewith.

(Feb. 4, 1887, ch. 104, pt. II, § 216, as added Aug. 9, 1935, ch. 498, 49 Stat. 558, and amended June 29, 1938, ch. 811, § 16, 52 Stat. 1240; Sept. 18, 1940, ch. 722, title I, § 22(b)-(d), 54 Stat. 924; Aug. 24, 1962, Pub. L. 87-595, § 1, 76 Stat. 397.)

REFERENCES IN TEXT

The Shipping Act of 1916, as amended, referred to in subsec. (c), is act Sept. 7, 1916, ch. 451, 39 Stat. 728, as amended, which is classified principally to chapter 23 (§ 801 et seq.) of Title 46, Shipping. For complete classification of this Act to the Code, see section 842 of Title 46 and Tables volume.

The Intercoastal Shipping Act of 1933, as amended, referred to in subsec. (c), is act Mar. 3, 1933, ch. 199, 47 Stat. 1425, as amended, which is classified generally to chapter 23A (§ 843 et seq.) of Title 46, Shipping. For complete classification of this Act to the Code, see section 848 of Title 46 and Tables volume.

AMENDMENTS

1962—Subsec. (c). Pub. L. 87-595 inserted the definition of "common carriers by water" and provided that through routes and joint rates, and all classifications, regulations and practices established in connection therewith should be subject to the provisions of this chapter.

1940—Subsec. (d). Act Sept. 18, 1940, § 22(b), added first sentence.

Subsec. (g). Act Sept. 18, 1940, § 22(c), substituted "but not for a longer period than seven months" for "for a period of ninety days and if the proceeding has not been concluded and a final order made within such period the Commission may, from time to time extend the period of suspension by order, but not for a longer period in the aggregate than one hundred and eighty days".

Subsec. (i). Act Sept. 18, 1940, § 22(d), inserted ", fares, and charges" following "reasonable rates", and "and classifications, regulations, and practices relating thereto" following "carriers by motor vehicles".

1938—Subsec. (g). Act June 29, 1938, added to proviso all text following "July 31, 1938".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 304a, 318, 1655 of this title.

§ 317. Tariffs of common carriers by motor vehicle

(a) Filing, posting, and publication

Every common carrier by motor vehicle shall file with the Commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property in interstate or foreign commerce between points on its own route and between points on its own route and points on the route of any other such carrier, or on the route of any common carrier by railroad and/or express and/or water, when a through route and joint rate shall have been established. Such rates, fares, and charges shall be stated in terms of lawful money of the United States.

The tariffs required by this section shall be published, filed, and posted in such form and manner, and shall contain such information, as the Commission by regulations shall prescribe; and the Commission is authorized to reject any tariff filed with it which is not in consonance with this section and with such regulations. Any tariff so rejected by the Commission shall be void and its use shall be unlawful.

(b) Deviation from rates and regulations enumerated in tariff forbidden; undue preferences

No common carrier by motor vehicle shall charge or demand or collect or receive a greater or less or different compensation for transportation or for any service in connection therewith between the points enumerated in such tariff than the rates, fares, and charges specified in the tariffs in effect at the time; and no such carrier shall refund or remit in any manner or by any device, directly or indirectly, or through any agent or broker or otherwise, any portion of the rates, fares, or charges so specified, or extend to any person any privileges or facilities for transportation in interstate or foreign commerce except such as are specified in its tariffs: *Provided*, That the provisions of sections 1(7) and 22 of this title shall apply to common carriers by motor vehicles subject to this chapter.

(c) Change in tariffs; filing and posting notice; powers of Commission

No change shall be made in any rate, fare, charge, or classification, or any rule, regulation, or practice affecting such rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a common carrier by motor vehicle, except after 30 days' notice of the proposed change filed and posted in accordance with paragraph (a) of this section. Such notice shall plainly state the change proposed to be made and the time when such change will take effect. The Commission may, in its discretion and for good cause shown, allow such change upon notice less than that herein specified or modify the requirements of this section with respect to posting and filing of tariffs either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

(d) Transportation without filing tariff forbidden

No common carrier by motor vehicle, unless otherwise provided by this chapter, shall engage in the transportation of passengers or property unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this chapter.

(Feb. 4, 1887, ch. 104, pt. II, § 217, as added Aug. 9, 1935, ch. 498, 49 Stat. 560, and amended Sept. 18, 1940, ch. 722, title I, § 22(e), 54 Stat. 925.)

AMENDMENTS

1940—Subsec. (b). Act Sept. 18, 1940, substituted "22" for "22(1)" in the proviso.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 312, 316 of this title.

§ 318. Schedules of contract carriers by motor vehicle

(a) Establishment, filing, and publication of schedules and rules affecting rates; notice of and hearing on proposed changes; undue preferences

It shall be the duty of every contract carrier by motor vehicle to establish and observe reasonable minimum rates and charges for any service rendered or to be rendered in the transportation of passengers or property or in connection therewith, and to establish and observe reasonable regulations and practices to be applied in connection with said reasonable minimum rates, fares, and charges. It shall be the duty of every contract carrier by motor vehicle to file with the Commission, publish, and keep open for public inspection, in the form and manner prescribed by the Commission, schedules containing the actual rates or charges of such carrier for the transportation of passengers or property in interstate or foreign commerce, and any rule, regulation, or practice affecting such rates or charges and the value of the service thereunder: *Provided*, That any contract carrier serving but one shipper having rendered continuous service to such shipper for not less than one year may file reasonable minimum rates and charges unless the Commission in any individual case, after hearing, finds it in the public interest to require the filing of actual rates and charges. No such contract carrier, unless otherwise provided by this chapter, shall engage in the transportation of passengers or property in interstate or foreign commerce unless the actual rates or charges for such transportation by said carrier have been published, filed, and posted in accordance with the provisions of this chapter. Nothing herein provided shall be so construed as to require such carriers to maintain the same rates, rules and regulations for the same services for all shippers served. No reduction shall be made in any such charge either directly or by means of any change in any rule, regulation, or practice affecting such charge or the value of the service thereunder, nor shall any new charge be established, except after thirty days' notice of the proposed change or new charge filed in the aforesaid form and manner but the Commission may, in its discretion and for good cause shown, allow such change upon less notice, or modify the requirements of this paragraph with respect to posting and filing of such schedules, either in particular instances, or by general order applicable to special or peculiar circumstances or conditions. Such notice shall plainly state the change proposed to be made and the time when such change will take effect. No such carrier shall demand, charge, or collect compensation for such transportation different from the charges filed in accordance with this subsection, as affected by any rule, regulation, or practice so filed, or less than the minimum rate or charge as may be prescribed by the Commission from time to time, and it shall be unlawful for any such carrier, by the furnishing of special services, facilities, or privileges, or by any other device whatsoever, to charge, accept, or receive compensation different from the actual rates and charges so filed, or less than the minimum charges so prescribed: *Provided*, That any such carrier or carriers, or any class or group thereof, may apply to the Com-

mission for relief from the provisions of this paragraph, and the Commission may, after hearing, grant such relief to such extent and for such time, and in such manner as in its judgment is consistent with the public interest and the national transportation policy declared in this Act.

(b) Complaints and investigations; hearings and orders of Commission

Whenever, after hearing, upon complaint or upon its own initiative, the Commission finds that any minimum rate or charge of any contract carrier by motor vehicle, or any rule, regulation, or practice of any such carrier affecting such minimum rate or charge, or the value of the service thereunder, for the transportation of passengers or property or in connection therewith, contravenes the national transportation policy declared in this Act, or is in contravention of any provision of this chapter, the Commission may prescribe such just and reasonable minimum rate or charge, or such rule, regulation, or practice as in its judgment may be necessary or desirable in the public interest and to promote such policy and will not be in contravention of any provision of this chapter. Such minimum rate or charge, or such rule, regulation, or practice, so prescribed by the Commission, shall give no advantage or preference to any such carrier in competition with any common carrier by motor vehicle subject to this chapter, which the Commission may find to be undue or inconsistent with the public interest and the national transportation policy declared in this Act, and the Commission shall give due consideration to the cost of the services rendered by such carriers, and to the effect of such minimum rate or charge, or such rule, regulation, or practice, upon the movement of traffic by such carriers. All complaints shall state fully the facts complained of and the reasons for such complaint and shall be made under oath.

(c) New or reduced charges; hearings and orders of Commission; suspension

Whenever there shall be filed with the Commission by any such contract carrier any schedule stating a charge for a new service or a reduced charge directly, or by means of any rule, regulation, or practice, for the transportation of passengers or property in interstate or foreign commerce, the Commission is authorized and empowered upon complaint of interested parties or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested party, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such charge, or such rule, regulation, or practice, and pending such hearing and the decision thereon the Commission, by filing with such schedule and delivering to the carrier affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such charge, or such rule, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after hearing, whether completed before or after the charge, or rule, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding instituted after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change in any charge or rule, regulation, or practice shall go into effect at the end of such period: *Provided*, That this paragraph shall not apply to any initial schedule or schedules filed on or before July 31, 1938, by any such carrier in bona fide operation on October 1, 1935. The rule as to burden of proof specified in section 316(g) of this title shall apply to this subsection.

(Feb. 4, 1887, ch. 104, pt. II, § 218, as added Aug. 9, 1935, ch. 498, 49 Stat. 561, and amended June 29, 1938, ch. 811, § 17, 52 Stat. 1240; Sept. 18, 1940, ch. 722, title I, §§ 16, 23, 54 Stat. 919, 925; Aug. 13, 1957, Pub. L. 85-124, 71 Stat. 343.)

REFERENCES IN TEXT

For the national transportation policy referred to in subsecs. (a) and (b), see National Transportation Policy note preceding section 301 of this title.

This Act, referred to in subsecs. (a) and (b), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 301 et seq.) and chapters 1, 12, 13, and 19 (§§ 1 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

AMENDMENTS

1957—Subsec. (a). Pub. L. 85-124 provided that contract carriers by motor vehicle file their actual rates or charges rather than their minimum rates and charges, inserted proviso that any contract carrier serving but one shipper for not less than one year may file minimum rates and charges unless Commission requires filing of actual rates and charges, further provided that no new charge be established except after 30 days notice, and prohibited motor contract carriers from charging or receiving any compensation different from properly filed rates or charges.

1940—Subsec. (a). Act Sept. 18, 1940, §§ 16, 23(a), inserted "the national transportation policy declared in the Interstate Commerce Act", struck out first sentence and inserted in lieu thereof two new sentences, and struck out of the third sentence "or copies of contracts" following "of such schedules".

Subsec. (b). Act Sept. 18, 1940, §§ 16, 23(b), inserted "the national transportation policy declared in the Interstate Commerce Act" and prescribed minimum charges of contract carriers by motor vehicle.

Subsec. (c). Act Sept. 18, 1940, § 23(c), prescribed lawfulness of reductions in charges of contract carriers.

1938—Subsec. (c). Act June 29, 1938, inserted in proviso "on or before July 31, 1938".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 312, 320 of this title.

§ 319. Application of section 20(11) and (12) of this title to common carriers by motor vehicle

The provisions of section 20(11) and (12) of this title, together with such other provisions of chapter 1 of this title (including penalties) as may be necessary for the enforcement of such provisions, shall apply with respect to common carriers by motor vehicle with like force and effect as in the case of those persons to which such provisions are specifically applicable.

(Feb. 4, 1887, ch. 104, pt. II, § 219, as added Aug. 9, 1935, ch. 498, 49 Stat. 563, and amended May 16, 1942, ch. 318, § 3, 56 Stat. 300; Aug. 7, 1942, ch. 552, § 1, 56 Stat. 746.)

AMENDMENTS

1942—Act Aug. 7, 1942, inserted reference to chapter 1 of this title.

Act May 16, 1942, added reference to section 20(12) of this title.

§ 320. Accounts, records and reports

(a) Reports to Commission; copies of contracts; publication of information

The Commission is authorized to require annual, periodical, or special reports from all motor carriers, brokers, lessors, and associations (as defined in this section); to prescribe the manner and form in which such reports shall be made; and to require from such carriers, brokers, lessors, and associations specific and full, true, and correct answers to all questions upon which the Commission may deem information to be necessary. Such annual reports shall give an account of the affairs of the carrier, broker, lessor, or association in such form and detail as may be prescribed by the Commission. The Commission may also require any motor carrier or broker to file with it a true copy of any contract, agreement, or arrangement between such carrier and any other carrier or person in relation to any traffic affected by the provisions of this chapter. The Commission shall not, however, make public any contract, agreement, or arrangement between a contract carrier by motor vehicle and a shipper, or any of the terms or conditions thereof, except as a part of the record in a formal proceeding where it considers such action consistent with the public interest: *Provided*, That if it appears from an examination of any such contract that it fails to conform to the published schedule of the contract carrier by motor vehicle as required by section 318(a) of this title, the Commission may, in its discretion, make public such of the provisions of the contract as the Commission considers necessary to disclose such failure and the extent thereof.

(b) Period covered by report; time of filing; oath

Said annual reports shall contain all the required information either (1) for the period of twelve months ending on the thirty-first day of December in each year, unless the Commission shall specify a different date; or (2) for a thirteen-period accounting year ending at the close of one of the last seven days of each calendar year, if the person making the report keeps his books on the basis of such an accounting year, and elects to make such report on the basis of such accounting year, subject to such rules and regulations as the Commission may prescribe. Any annual report shall be made out under oath and filed with the Commission at its office in Washington within three months after the close of the year for which the report is made, unless additional time be granted in any case by the Commission. Such periodical or special reports as may be required by the Commission under subsection (a) of this section shall also be under oath, whenever the Commission so requires.

(c) Depreciation charges

The Commission may prescribe for motor carriers the classes of property for which depreciation charges may properly be included under operating expenses, and the rate or rates of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. The Commission may, when it deems necessary, modify the classes and rates so prescribed. When the Commission shall have exercised its authority under the foregoing provisions of this subsection, motor carriers shall not charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a rate of depreciation other than that prescribed therefor by the Commission, and no such carrier shall include under operating expenses any depreciation charge in any form whatsoever other than as prescribed by the Commission.

(d) Accounts, records, etc., form; period of preservation; access to by Commission or agents

The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by motor carriers, brokers, and lessors, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys; and it shall be unlawful for such carriers, brokers, and lessors to keep any accounts, records, and memoranda contrary to any rules, regulations, or orders of the Commission with respect thereto. The Commission may issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, correspondence, or documents of motor carriers, brokers, or lessors as may after a reasonable time be destroyed, and prescribing the length of time the same shall be preserved. The Commission or its duly authorized special agents, accountants, or examiners shall at all times have access to and authority, under its order, to inspect and examine any and all lands, buildings, or equipment of motor carriers, brokers, and lessors; and shall have authority to inspect and copy any and all accounts, books, records, memoranda, correspondence, and other documents of such carriers, brokers, lessors, and associations (as defined in this section), and such accounts, books, records, memoranda, correspondence, and other documents of any person controlling, controlled by, or under common control with any such carrier, as the Commission deems relevant to such person's relation to or transactions with such carrier. Motor carriers, brokers, lessors, and persons shall submit their accounts, books, records, memoranda, correspondence, and other documents for the inspection and copying authorized by this paragraph, and motor carriers, brokers, and lessors shall submit their lands, buildings, and equipment for examination and inspection, to any duly authorized special agent, accountant, or examiner of the Commission upon demand and the display of proper credentials.

(e) Definitions

As used in this section, the words "keep" and "kept" shall be construed to mean made, pre-

pared, or compiled, as well as retained; the term "lessor" means a lessor of any right to operate as a motor carrier; the term "motor carrier", "broker", or "lessor" includes a receiver or trustee of any such motor carrier, broker, or lessor; and the term "association" means an association or organization maintained by or in the interest of any group of motor carriers or brokers subject to this chapter which performs any service, or engages in any activities in connection with any traffic, transportation, or facilities subject to this Act.

(f) Report of accident as evidence in damage suit

No report by any motor carrier of any accident arising in the course of the operations of such carrier, made pursuant to any requirement of the Commission, and no report by the Commission of any investigation of any such accident, shall be admitted as evidence, or used for any other purpose, in any suit or action for damages growing out of any matter mentioned in such report or investigation.

(g) Inspection, examination, and copying of accounts, books, records, etc.; form of accounts, records and memorandums

The Commission or its duly authorized special agents, accountants, or examiners shall, during normal business hours, have access to and authority, under its order, to inspect, examine, and copy any and all accounts, books, records, memorandums, correspondence, and other documents pertaining to motor vehicle transportation of a cooperative association or federation of cooperative associations which is required to give notice to the Commission pursuant to the provisions of section 303(b)(5) of this title. *Provided, however,* That the Commission shall have no authority to prescribe the form of any accounts, records, or memorandums to be maintained by a cooperative association or federation of cooperative associations.

(Feb. 4, 1887, ch. 104, pt. II, § 220, as added Aug. 9, 1935, ch. 498, 49 Stat. 563, and amended Sept. 18, 1940, ch. 722, title I, § 24, 54 Stat. 926; Aug. 2, 1949, ch. 379, §§ 11–13, 63 Stat. 487; July 26, 1968, Pub. L. 90–433, § 2, 82 Stat. 449; July 7, 1972, Pub. L. 92–338, 86 Stat. 423.)

REFERENCES IN TEXT

This Act, referred to in subsec. (e), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 301 et seq.) and chapters 1, 12, 13, and 19 (§§ 1 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

AMENDMENTS

1972—Subsec. (b). Pub. L. 92-338 added provision giving option to the carriers to make annual reports on a thirteen-period accounting year basis subject to rules and regulations prescribed by the Commission.

1968—Subsec. (g). Pub. L. 90-433 added subsec. (g).

1949—Subsec. (a). Act Aug. 2, 1949, § 11, made section applicable to associations or organizations maintained by or in the interest of motor carriers.

Subsec. (d). Act Aug. 2, 1949, § 12, made section applicable to associations or organizations maintained by or in the interest of motor carriers.

Subsec. (e). Act Aug. 2, 1949, § 13, defined the term "association".

1940—Act Sept. 18, 1940, amended section generally and added subsecs. (d) to (f).

CROSS REFERENCES

Control defined, see section 1 of this title.

Motor carrier constructed, see section 304 of this title.

Noncarrier deemed carrier upon acquiring control, see section 5 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 5, 304, 322, 1655 of this title.

§ 321. Orders, notices and service of process

(a) Persons upon whom notice or orders served; manner and time of service

It shall be the duty of every motor carrier to file with the board of each State in which it operates under a certificate or permit issued under this chapter, and with the Commission, a designation in writing of the name and post-office address of a person upon whom or which service of notices or orders may be made under this chapter. Such designation may from time to time be changed by like writing similarly filed. Service of notices or orders in proceedings under this chapter may be made upon a motor carrier by personal service upon it or upon the person so designated by it, or by mail addressed to it or to such person at the address filed. In default of such designation, service of any notice or order may be made by posting in the office of the secretary or clerk of the board of the State wherein the motor carrier maintains headquarters and in the office of the Secretary of the Commission. Whenever notice is given by mail as provided herein the date of mailing shall be considered as the time when notice is served. In proceedings before the Commission involving the lawfulness of rates, fares, charges, classifications, or practices, service of notice of the suspension of a tariff or schedule upon an attorney in fact of a carrier who has filed said tariff or schedule in behalf of such carrier naming the rates, fares, charges, classifications, or practices, involved in such proceedings shall be deemed to be due and sufficient service upon the carrier and service of notice of the suspension of a joint tariff or schedule upon a carrier which has filed said joint tariff to which another carrier is a party naming the rates, fares, charges, classifications, or practices involved in such proceedings shall be deemed to be due and sufficient service upon the several carriers parties thereto, but such manner of service shall not be considered as excluding service in any other manner authorized by law.

(b) Effective date and duration of orders of Commission

Except as otherwise provided in this chapter, all orders of the Commission shall take effect within such reasonable time, not less than thirty days, as the Commission may prescribe and shall continue in force until its further order, or for a specified period of time, according as shall be prescribed in the order, unless the same shall be suspended or modified or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction.

(c) Designation of agent for service of process

Every motor carrier (including any motor carrier operating within the United States in the course of engaging in transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country) shall also file with the board of each State in which it operates and with the Interstate Commerce Commission a designation in writing of the name and post-office address of a person in such State upon whom process issued by or under the authority of any court having jurisdiction of the subject matter may be served in any proceeding at law or equity brought against such carrier. Such designation may from time to time be changed by like writing similarly filed. In the event such carrier fails to file such designation, service may be made upon any agent of such motor carrier within such State.

(d) "Motor carriers" as including brokers

As used in this section, the term "motor carriers" includes brokers.

(Feb. 4, 1887, ch. 104, pt. II, § 221, as added Aug. 9, 1935, ch. 498, 49 Stat. 563, and amended Sept. 18, 1940, ch. 722, title I, § 25(a), (b), 54 Stat. 928; Aug. 2, 1949, ch. 379, § 14, 63 Stat. 487; July 22, 1954, ch. 563, § 3, 68 Stat. 526.)

AMENDMENTS

1954—Subsec. (c). Act July 22, 1954, inserted the requirement that the names of State agents (for service of process) also be filed with the Interstate Commerce Commission, and inserted the provision including any motor carrier operating within the United States in the course of engaging in transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country.

1949—Subsec. (a). Act Aug. 29, 1949, struck out of the third sentence the word "registered" preceding "mail", and inserted provision relating to service of notice of suspension of a joint tariff.

1940—Subsec. (a). Act Sept. 18, 1940, § 25(a), provided that service of notice of suspension of a tariff or schedule upon the attorney in fact who filed the tariff or schedule is deemed sufficient notice upon the carrier.

Subsec. (b). Act Sept. 18, 1940, § 25(b), inserted ", not less than thirty days" following "within such reasonable time".

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Interstate Commerce Commission and the Chairman, members, offices, and officers thereof to the extent that they relate to private carriers of property by motor vehicle and carriers of migrant workers by motor vehicle other than contract carriers under subsecs. (a) and (c) of this section were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, § 6(e)(6)(D), Oct. 15, 1966, 80 Stat. 940, which created the Department of Transportation. See section 1655(e)(6)(D) of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under rule 4, see note by Advisory Committee under rule 4, Title 28, Appendix, Judiciary and Judicial Procedure.

Process, see rule 4, Title 28, Appendix.

CROSS REFERENCES

Foreign commerce defined, see section 303 of this title.

Motor carrier construed, see section 304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 303, 304, 1655 of this title.

§ 322. Unlawful operation

(a) Violation of chapter or rules or orders; penalty where none otherwise provided

Any person knowingly and willfully violating any provision of this chapter, or any rule, regulation, requirement, or order thereunder, or any term or condition of any certificate, permit, or license, for which a penalty is not otherwise herein provided, shall, upon conviction thereof, be fined not less than $100 nor more than $500 for the first offense and not less than $200 nor more than $500 for any subsequent offense. Each day of such violation shall constitute a separate offense.

(b) Jurisdiction of district courts to restrain violations and enforce orders

(1) If any motor carrier or broker operates in violation of any provision of this chapter (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any lawful rule, regulations, requirement, or order promulgated by the Commission, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply for the enforcement thereof to the district court of the United States for any district where such motor carrier or broker operates. In any proceeding instituted under the provisions of this subsection, any person, or persons, acting in concert or participating with such carrier or broker in the Commission of such violation may, without regard to his or their residence, be included, in addition to the motor carrier or broker, as a party, or parties, to the proceeding. The court shall have jurisdiction to enforce obedience to any such provision of this part, or of such rule, regulation, requirement, order, term, or condition by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its officers, agents, employees, and representatives, and such other person, or persons, acting in concert or participating with such carrier or broker, from further violation of such provision of this part, or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto. Process in such proceedings may be served upon such motor carrier, or broker or upon such person, or persons, acting in concert or participating therewith in the commission of such violation, without regard to the territorial limits of the district or of the State in which the proceeding is instituted.

(2) If any person operates in clear and patent violation of any provisions of section 303(c), 306, 309, or 311 of this title, or any rule, regulation, requirement, or order thereunder, any person injured thereby may apply to the district court of the United States for any district where such person so violating operates, for the enforcement of such section, or of such rule, regulation, requirement, or order. The court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such person, his or its officers, agents, employ-

ees, and representatives from further violation of such section or of such rule, regulation, requirement, or order; and enjoining upon it or them obedience thereto. A copy of any application for relief filed pursuant to this paragraph shall be served upon the Commission and a certificate of such service shall appear in such application. The Commission may appear as of right in any such action. The party who or which prevails in any such action may, in the discretion of the court, recover reasonable attorney's fees to be fixed by the court, in addition to any costs allowable under the Federal Rules of Civil Procedure, and the plaintiff instituting such action shall be required to give security, in such sum as the court deems proper, to protect the interests of the party or parties against whom any temporary restraining order, temporary injunctive, or other process is issued should it later be proven unwarranted by the facts and circumstances.

(3) In any action brought under paragraph (2) of this subsection, the Commission may notify the district court of the United States in which such action is pending that it intends to consider the matter in a proceeding before the Commission. Upon the filing of such a notice the court shall stay further action pending disposition of the proceeding before the Commission.

(c) Participation in unjust discrimination; evasion of regulations; penalty

Any person, whether carrier, shipper, consignee, or broker, or any officer, employee, agent, or representative thereof, who shall knowingly offer, grant, or give, or solicit, accept, or receive any rebate, concession, or discrimination in violation of any provision of this chapter, or who by means of any false statement or representation, or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, desposition, lease, or bill of sale, or by any other means or device, shall knowingly and willfully assist, suffer or permit any person or persons, natural or artificial, to obtain transportation of passengers or property subject to this chapter for less than the applicable rate, fare, or charge, or who shall knowingly and willfully by any such means or otherwise fraudulently seek to evade or defeat regulation as in this chapter provided for motor carrier or brokers, shall be deemed guilty of a misdemeanor and upon conviction thereof be fined not less than $200 nor more than $500 for the first offense and not less than $250 nor more than $2,000 for any subsequent offense.

(d) Disclosure of information by agent, accountant, or examiner; penalty

Any special agent, accountant, or examiner who knowingly and willfully divulges any fact or information which may come to his knowledge during the course of any examination or inspection made under authority of section 320 of this title, except as he may be directed by the Commission or by a court or judge thereof, shall be guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than $500 or imprisonment for not exceeding six months, or both.

(e) Disclosure or solicitation of information concerning property in transportation

It shall be unlawful for any motor carrier or broker engaged in interstate or foreign commerce or any officer, receiver, trustee, lessee, agent, or employee of such carrier, broker, or person, or for any other person authorized by such carrier, broker, or person to receive information, knowingly to disclose to, or permit to be acquired by any person other than the shipper or consignee without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such motor carrier or broker for such transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person to solicit or knowingly receive any such information which may be so used.

(f) Giving information in response to legal process, or to government officers or to other carriers for adjustment of rates permitted

Nothing in this chapter shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any court, or to any officer or agent of the Government of the United States or of any State, Territory, or District thereof, in the exercise of his power, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crimes or to another carrier or broker, or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers or brokers.

(g) Failure or refusal to make reports or keep accounts and records; altering or making false report or record; penalty

Any motor carrier, broker, or other person, or any officer, agent, employee, or representative thereof, who shall willfully fail or refuse to make a report to the Commission as required by this chapter, or to make specific and full, true, and correct answer to any question within thirty days from the time it is lawfully required by the Commission so to do, or to keep accounts, records, and memoranda in the form and manner prescribed by the Commission, or shall knowingly and willfully falsify, destroy, mutilate, or alter any such report, account, record, or memorandum, or shall knowingly and willfully file with the Commission any false report, account, record, or memorandum, or shall knowingly and willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of the carrier, or person required under this chapter to keep the same, or shall knowingly and willfully keep any accounts, records, or memoranda contrary to the rules, regulations, or orders of the Commission with respect thereto, shall be deemed guilty of a misdemeanor and upon conviction thereof be subject for each offense to a fine of not more than $5,000. As used in this subsection, the words "keep" and "kept" shall

be construed to mean made, prepared, or compiled, as well as retained.

(h) Civil action for fines; amount; service of process; payment of costs and expenses

Any motor carrier, broker, or lessor, or other person, or any officer, agent, employee, or representative thereof, who shall fail or refuse to keep, preserve, or forward any account, record, or memorandum in the substance, form, or manner prescribed in this chapter or in any rule, order, or regulation prescribed under this chapter; or who shall fail or refuse to comply with any requirement of this chapter with respect to the filing with this Commission or with any agency, office, or representative of the Commission, as prescribed by the Commission, any annual periodical, or special report, or other report, tariff, schedule, contract, document, or data or with any rule, order, or regulation prescribed with respect to such filing; or who shall fail or refuse to make full, true, or correct answer to any question required by the Commission to be made under the provisions of this chapter, or who shall fail or refuse to comply with the provisions of section 303(c) or section 306(a)(1) or section 309(a)(1) of this title shall forfeit to the United States not to exceed $500 for each such offense, and, in case of a continuing violation not to exceed $250 for each additional day during which such failure or refusal shall continue. All forfeitures provided for in this paragraph shall be payable into the Treasury of the United States and shall be recoverable in a civil suit in the name of the United States, brought in the district where the motor carrier or broker has its principal office, or in any district in which such motor carrier or broker was, at the time of the offense, authorized by this Commission, or by this chapter, to engage in operation as such motor carrier or broker; or in any district where such forfeiture may accrue; or in the district where the offender is found. All process in any such case may be served in the judicial district whereof such offender is an inhabitant or wherever he may be found. It shall be the duty of the various United States attorneys under the direction of the Attorney General of the United States to prosecute for the recovery of such forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

(Feb. 4, 1887, ch. 104, pt. II, § 222, as added Aug. 9, 1935, ch. 498, 49 Stat. 564, and amended Sept. 18, 1940, ch. 722, title I, § 25(c), (d), 54 Stat. 928; June 25, 1948, ch. 646, § 1, 62 Stat. 909; Aug. 2, 1949, ch. 379, § 15, 63 Stat. 488; Aug. 14, 1957, Pub. L. 85-135, § 4, 71 Stat. 352; Sept. 6, 1965, Pub. L. 89-170, §§ 3, 4, 79 Stat. 649.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1965—Subsec. (b). Pub. L. 89-170, § 4, amended existing provision by authorizing the joinder as parties, without regard to residence, of persons acting in concert or participating with a carrier or broker in the commission of a violation and authorized the service of process in such a proceeding upon carrier, broker person acting in concert or participating in the violation without regard to the territorial limits of the district or state in which the proceeding is instituted, designated such existing provision as thus amended as par. (1), and added pars. (2) and (3).

Subsec. (h). Pub. L. 89-170, § 3, inserted reference to a failure or refusal to comply with the provisions of sections 303(c), 306(a)(1), or 309(a)(1) of this title and substituted "not to exceed $500" and "$250" for "the sum of $100" and "$50" respectively.

1957—Subsec. (a). Pub. L. 85-135, § 4(1), substituted "not less than $100 nor more than $500 for the first offense and not less than $200 nor more than $500 for any subsequent offense" for the words "not more than $100 for the first offense and not more than $500 for any subsequent offense".

Subsec. (c). Pub. L. 85-135, § 4(2), substituted "not less than $200 nor more than $500 for the first offense and not less than $250 nor more than $2,000 for any subsequent offense" for the words "not more than $500 for the first offense and not more than $2,000 for any subsequent offense".

1949—Subsec. (h). Act Aug. 2, 1949, added subsec. (h).

1940—Subsec. (d). Act Sept. 18, 1940, § 25(c), changed penalty provisions from a $5,000 fine or imprisonment for not exceeding two years, or both, to a $500 fine or imprisonment not exceeding six month, or both.

Subsec. (g). Act Sept. 18, 1940, § 25(d), inserted provision relating to making specific and true answers to any question within thirty days from the time it is lawfully required by the Commission so to do, and added definition provision.

CHANGE OF NAME

In subsec. (h), act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorneys" for "district attorneys". See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision note thereunder.

CROSS REFERENCES

Motor carrier construed, see section 304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 304, 1655 of this title.

§ 323. Collection of rates and charges; extension of credit; liability of agent of beneficial owner

No common carrier by motor vehicle shall deliver or relinquish possession at destination of any freight transported by it in interstate or foreign commerce until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe to govern the settlement of all such rates and charges, including rules and regulations for weekly or monthly settlement, and to prevent unjust discrimination or undue preference or prejudice: *Provided*, That the provisions of this section shall not be construed to prohibit any such carrier from extending credit in connection with rates and charges on freight transported for the United States, for any department, bureau, or agency thereof, or for any State or Territory, or political subdivision thereof, or for the District of Columbia. Where any common carrier by motor vehicle is instructed by a shipper or consignor to deliver property transported by such carrier to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect of the transportation of such property (beyond those billed against him at the time of

delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee (a) is an agent only and had no beneficial title in the property, and (b) prior to delivery of the property has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of shipment reconsigned or diverted to a point other than that specified in the original bill of lading, has also notified the delivering carrier in writing of the name and address of the beneficial owner of the property. In such cases the shipper or consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner shall be liable for such additional charges, irrespective of any provisions to the contrary in the bill of lading or in the contract under which the shipment was made. If the consignee has given to the carrier erroneous information as to who is the beneficial owner, such consignee shall himself be liable for such additional charges, notwithstanding the foregoing provisions of this section. On shipments reconsigned or diverted by an agent who has furnished the carrier with a notice of agency and the proper name and address of the beneficial owner, and where such shipments are refused or abandoned at ultimate destination, the said beneficial owner shall be liable for all legally applicable charges in connection therewith.

(Feb. 4, 1887, ch. 104, pt. II, § 223, as added Aug. 9, 1935, ch. 498, 49 Stat. 565.)

§ 324. Identification plates for interstate motor carriers

The Commission is authorized, under such rules and regulations as it shall prescribe, to require the display of suitable identification plate or plates, upon any motor vehicle used in transportation subject to any of the provisions of this chapter, to provide for the issuance of such plates, and to receive the payment by such carriers of the reasonable cost thereof. All moneys so collected shall be paid into the Treasury of the United States. Any substitution, transfer, or use of any such identification plate or plates, except such as may be duly authorized by the Commission, is prohibited and shall be unlawful.

(Feb. 4, 1887, ch. 104, pt. II, § 224, as added Aug. 9, 1935, ch. 498, 49 Stat. 566, and amended June 29, 1938, ch. 811, § 18, 52 Stat. 1240.)

Amendments

1938—Act June 29, 1938, made section applicable to any motor vehicle subject to this chapter.

Transfer of Functions

All functions, powers, and duties of the Interstate Commerce Commission and the Chairman, members, offices, and officers thereof to the extent that they relate to private carriers of property by motor vehicle and carriers of migrant workers by motor vehicle other than contract carriers under this section were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, § 6(e)(6)(D), Oct. 15, 1966, 80 Stat. 940, which created the Department of Transportation. See section 1655(e)(6)(D) of this title.

Cross References

Motor carrier construed, see section 304 of this title.

Section Referred to in Other Sections

This section is referred to in sections 304, 1655 of this title.

§ 324a. Allowances to shippers for transportation services

If the owner of property transported under this chapter directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be published in tariffs or schedules filed in the manner provided in this chapter and shall be no more than is just and reasonable; and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order.

(Feb. 4, 1887, ch. 104, pt. II, § 225, as added Sept. 18, 1940, ch. 722, title I, § 26(a), 54 Stat. 928.)

Prior Provisions

A prior section 225 of act Feb. 4, 1887, ch. 104, pt. II, as added Aug. 9, 1935, ch. 498, 49 Stat. 566, was renumbered section 226, and is classified to section 325 of this title.

§ 325. Investigation of motor vehicle sizes and weights and qualifications and hours of service of employees

The Commission is authorized to investigate and report on the need for Federal regulation of the sizes and weight of motor vehicles and combinations of motor vehicles and of the qualifications and maximum hours of service of employees of all motor carriers and private carriers of property by motor vehicle; and in such investigation the Commission shall avail itself of the assistance of all departments or bureaus of the Government and of any organization of motor carriers having special knowledge of any such matter.

(Feb. 4, 1887, ch. 104, pt. II, § 226, formerly § 225, as added Aug. 9, 1935, ch. 498, 49 Stat. 566, and renumbered Sept. 18, 1940, ch. 722, title I, § 26(b), 54 Stat. 929.)

Prior Provisions

A prior section 226 of act Feb. 4, 1887, ch. 104, pt. II, as added Aug. 9, 1935, ch. 498, 49 Stat. 567, was renumbered section 227, and is classified to section 326 of this title.

Transfer of Functions

All functions, powers, and duties of the Interstate Commerce Commission and its Chairman, members, officers, and offices relating generally to investigation of motor vehicle sizes, weights, and service of employees under this section were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, § 6(e)(6)(B), Oct. 15, 1966, 80 Stat. 939, which created the Department of Transportation. See section 1655(e)(6)(B) of this title.

Expedition of Investigation

Section 27 of act Sept. 18, 1940, authorized the Interstate Commerce Commission to expedite the investigation of the need for Federal regulation of the sizes and weight of motor vehicles, authorized by this sec-

tion, and to report to Congress thereon at the earliest practicable date.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1655 of this title.

§ 325a. State or subdivision income tax withholding on compensation paid to interstate motor vehicle employees

(a) Withholding where employee earns more than 50 per centum of compensation paid by carrier to him or where employee resides; filing of information return by carrier

No part of the compensation paid by any motor carrier subject to the provisions of this chapter, or by any private carrier of property by motor vehicle, to any employee who performs his regularly assigned duties as such an employee on a motor vehicle in more than one State, shall be withheld for income tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision wherein more than 50 per centum of the compensation paid by the carrier to such employee is earned: *Provided, however,* That if the employee did not earn more than 50 per centum of his compensation from said carrier in any one State or any subdivision thereof during the preceding calendar year, then withholding shall be required only for the State or subdivision of the employee's residence, as shown on the employment records of any such carrier; nor shall such carrier file any information return or other report for income tax purposes with respect to such compensation with any State or subdivision thereof other than such State or subdivision of residence, and the State or subdivision for which the withholding of such tax has been required under this subsection.

(b) State or subdivision where employee deemed to have earned more than 50 per centum of compensation

For the purposes of subsection (a) of this section, an employee shall be deemed to have earned more than 50 per centum of his compensation in any State or subdivision in which the mileage traveled by him in such State or subdivision is more than 50 per centum of the total mileage traveled by him in the calendar year while so employed.

(c) Definitions

For the purpose of this section the term "State" also means any possession of the United States or the Commonwealth of Puerto Rico; and the term "compensation" shall mean all moneys received for services rendered by an employee, as defined in subsection (a) of this section in the performance of his duties and shall include wages and salary.

(Feb. 4, 1887, ch. 104, pt. II, § 226A, as added Dec. 23, 1970, Pub. L. 91-569, § 2(b), 84 Stat. 1500.)

EFFECTIVE DATE

Section effective January 1, 1971, see section 5 of Pub. L. 91-569, set out as an Effective Date note under section 26a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 302 of this title; title 26 section 6362.

§ 326. Separability of provisions

If any provision of this chapter, or the application thereof to any person, or commerce, or circumstance, is held invalid, the remainder of the chapter, and the application of such provision to other persons, or commerce, or circumstances, shall not be affected thereby.

(Feb. 4, 1887, ch. 104, pt. II, § 227, formerly § 226, as added Aug. 9, 1935, ch. 498, 49 Stat. 567, and renumbered Sept. 18, 1940, ch. 722, title I, § 26(b), 54 Stat. 929.)

PRIOR PROVISIONS

A prior section 227 of act Feb. 4, 1887, ch. 104, pt. II, as added Aug. 9, 1935, ch. 498, 49 Stat. 567, was renumbered section 228, and is classified to section 327 of this title.

§ 327. Effective date of chapter

This chapter (except this section, which shall become effective August 9, 1935) shall take effect and be in force on and after the 1st day of October 1935: *Provided, however,* That the Commission shall, if found by it necessary or desirable in the public interest, by general or special order, postpone the taking effect of any provision of this chapter to such time after the 1st day of October 1935, as the Commission shall prescribe, but not beyond the 1st day of April 1936.

(Feb. 4, 1887, ch. 104, pt. II, § 228, formerly § 227, as added Aug. 9, 1935, ch. 498, 49 Stat. 567, and renumbered and amended Sept. 18, 1940, ch. 722, title I, § 26(b), 54 Stat. 929.)

AMENDMENTS

1940—Act Sept. 18, 1940, struck out "(a)" at beginning of section.

CHAPTER 9—CIVIL AERONAUTICS

§§ 401 to 403. Repealed. Pub. L. 85-726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806

Section 401, acts June 23, 1938, ch. 601, title I, § 1, 52 Stat. 977; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; June 19, 1948, ch. 523, §§ 1, 2, 62 Stat. 493; June 14, 1951, ch. 123, § 2, 65 Stat. 69; July 14, 1952, ch. 740, § 1, 66 Stat. 628, defined terms used in the Civil Aeronautics Act of 1938. See section 1301 of this title.

Section 402, act June 23, 1938, ch. 601, title I, § 2, 52 Stat. 980; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, contained a declaration of policy. See sections 1302 and 1303 of this title.

Section 403, act June 23, 1938, ch. 601, title I, § 3, 52 Stat. 980, contained a declaration of public right of transit. See section 1304 of this title.

EFFECTIVE DATE OF REPEAL

Section 1505(2) of Pub. L. 85-726, title XV, Aug. 23, 1958, 72 Stat. 810, provided that the repeal of these sections shall be effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85-726 qualifies and takes office. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

§§ 421, 422. Repealed. Pub. L. 85–726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806

Section 421, acts June 23, 1938, ch. 601, title II, § 201, 52 Stat. 980; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235; June 28, 1941, ch. 258, title II, § 201, 55 Stat. 282; Oct. 15, 1949, ch. 695, § 5(a), 63 Stat. 880; July 31, 1956, ch. 804, title I, § 106(a), 70 Stat. 727, created the Civil Aeronautics Board, provided for its composition, appointment of members, qualifications, compensation, principal office, and seal. See section 1321 of this title.

Section 422, acts June 23, 1938, ch. 601, title II, § 202, 52 Stat. 981; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972, related to the organization of the Board. See section 1322 of this title.

EFFECTIVE DATE OF REPEAL

Section 1505(2) of Pub. L. 85–726, title XV, Aug. 23, 1958, 72 Stat. 810, provided that the repeal of these sections shall be effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85–726 qualifies and takes office. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

§ 422a. Omitted

CODIFICATION

Section, act June 28, 1941, ch. 258, title II, § 201, 55 Stat. 282, which provided for salary and expenses of the Civil Aeronautics Board, was omitted from the Code as superseded by section 421 of this title.

§ 422b. Transferred

CODIFICATION

Section, Pub. L. 85–469, title III, § 301, June 25, 1958, 72 Stat. 237, which authorized the Chairman of the Civil Aeronautics Board to place one additional position in grade 18, two in grade 17, and seven in grade 16 of the General Schedule, was transferred and set out as a note under section 1322 of this title, and subsequently repealed by Pub. L. 87–367, title I, § 103(6), Oct. 4, 1961, 75 Stat. 787.

§§ 423 to 427. Repealed. Pub. L. 85–726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806

Section 423, act June 23, 1938, ch. 601, title II, § 203, 52 Stat. 982, related to the transfer of personnel, property, and appropriation balances.

Section 424, act June 23, 1938, ch. 601, title II, § 204, 52 Stat. 983; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, related to authorization of expenditures and travel. See section 1323 of this title.

Section 425, act June 23, 1938, ch. 601, title II, § 205, 52 Stat. 984; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, prescribed the general powers and duties of the Board. See section 1324 of this title.

Section 426, act June 23, 1938, ch. 601, title II, § 206, 52 Stat. 984; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, provided for an annual report to Congress. See section 1325 of this title.

Section 427, act June 23, 1938, ch. 601, title II, § 207, as added Aug. 30, 1949, ch. 520, 63 Stat. 678, related to the furnishing of supplies and materials for execution of the Administration's functions in Alaska.

EFFECTIVE DATE OF REPEAL

Section 1505(2) of Pub. L. 85–726, title XV, Aug. 23, 1958, 72 Stat. 810, provided that the repeal of these sections shall be effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85–726 qualifies and takes office. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

§§ 451 to 460. Repealed. Pub. L. 85–726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806

Section 451, act June 23, 1938, ch. 601, title III, § 301, 52 Stat. 985; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, related to the fostering of air commerce. See section 1346 of this title.

Section 452, acts June 23, 1938, ch. 601, title III, § 302, 52 Stat. 985; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235; June 29, 1948, ch. 713, 62 Stat. 1093; July 1, 1948, ch. 792, §§ 1, 2, 62 Stat. 1216, related to establishment of airways, duties of Administrator, establishment of air navigation aids, acquisition and disposal of property, training of air-traffic control-tower operators. See sections 1344 and 1348 of this title.

Section 453, act June 23, 1938, ch. 601, title III, § 303, 52 Stat. 986; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, provided for the expenditure of Federal funds. See section 1349 of this title.

Section 454, act June 23, 1938, ch. 601, title III, § 304, 52 Stat. 986; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, related to meteorological service. See section 1351 of this title.

Section 455, act June 23, 1938, ch. 601, title III, § 305, 52 Stat. 986; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, related to the development of facilities. See section 1353 of this title.

Section 456, act June 23, 1938, ch. 601, title III, § 306, 52 Stat. 986; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, provided for the collection and dissemination of information. See section 1352 of this title.

Section 457, acts June 23, 1938, ch. 601, title III, § 307, 52 Stat. 986; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233; Aug. 8, 1950, ch. 643, 64 Stat. 417; July 7, 1958, Pub. L. 85–507, § 21(b)(3), 72 Stat. 337, related to development planning. See sections 1353 and 1354(d) of this title.

Section 458, act June 23, 1938, ch. 601, title III, § 308, 52 Stat. 986; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, prescribed other duties of the Administrator. See section 1354 of this title.

Section 459, act June 23, 1938, ch. 601, title III, § 309, as added July 1, 1948, ch. 792, § 3, 62 Stat. 1217, related to the conduct of hearings and investigations, powers of the Administrator and examiners. See section 1354(c) of this title.

Section 460, act June 23, 1938, ch. 601, title III, § 310, as added Sept. 29, 1950, ch. 1107, 64 Stat. 1079, provided for the delegation of powers and duties to private persons. See section 1355 of this title.

EFFECTIVE DATE OF REPEAL

Section 1505(2) of Pub. L. 85–726, title XV, Aug. 23, 1958, 72 Stat. 810, provided that the repeal of these sections shall be effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85–726 qualifies and takes office. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

REPEAL OF SUBSECS. (b) AND (c) OF SECTION 457 BY PUB. L. 85-726

Section 1401(b) of Pub. L. 85-726 provided in part that the repeal of subsecs. (b) and (c) of section 457 of this title by subsec. (b) of section 1401 of Pub. L. 85-726, shall not take effect in such manner as to impair the operation of the deferred repeal of such subsections as provided in section 21 of the Government Employees Training Act, now covered by section 4101 et seq. of Title 5, Government Organization and Employees.

§ 461. Transferred

CODIFICATION

Section, Pub. L. 85-496, title I, § 101, June 25, 1958, 72 Stat. 228, which authorized the Administrator of the Federal Aviation Agency to place one additional position on grade 18, two in grade 17, and seven in grade 16 of the General Schedule, was transferred and set out as a note under section 1343 of this title, and subsequently repealed by Pub. L. 87-367, title I, § 103(15), Oct. 4, 1961, 75 Stat. 788.

§§ 481 to 485. Repealed. Pub. L. 85-726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806

Section 481, acts June 23, 1938, ch. 601, title IV, § 401, 52 Stat. 987; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235; May 19, 1955, ch. 41, 69 Stat. 49; July 20, 1956, ch. 650, 70 Stat. 591; Aug. 26, 1957, Pub. L. 85-166, 71 Stat. 415, related to the certificate of public convenience and necessity. See section 1371 of this title.

Section 482, act June 23, 1938, ch. 601, title IV, § 402, 52 Stat. 991; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, provided for permits to foreign air carriers. See section 1372 of this title.

Section 483, acts June 23, 1938, ch. 601, title IV, § 403, 52 Stat. 992; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235; Aug. 1, 1956, ch. 816, 70 Stat. 784, related to tariffs of air carriers. See section 1373 of this title.

Section 484, act June 23, 1938, ch. 601, title IV, § 404, 52 Stat. 993; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, related to rates for carriage of persons and property. See section 1374 of this title.

Section 485, acts June 23, 1938, ch. 601, title IV, § 405, 52 Stat. 994; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235; July 2, 1940, ch. 526, § 1, 54 Stat. 735; June 28, 1952, ch. 485, § 1(5), 66 Stat. 286, provided for the transportation of mail. See section 1375 of this title.

EFFECTIVE DATE OF REPEAL

Section 1505(2) of Pub. L. 85-726, title XV, Aug. 23, 1958, 72 Stat. 810, provided that the repeal of these sections shall be effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85-726 qualifies and takes office. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

§§ 485a to 485c. Repealed. Pub. L. 86-682, § 12(c), Sept. 2, 1960, 74 Stat. 725

Section 485a, act Aug. 27, 1940, ch. 693, § 1, 54 Stat. 862, related to the transportation of foreign mail, collection of charges therefor, offsets against such charges, and to accounting therefor. See section 2602 of Title 39, Postal Service.

Section 485b, act Aug. 27, 1940, ch. 693, § 2, 54 Stat. 863, related to advances to carriers from sums the United States was owed by foreign countries for mail carriage. See section 2602 of Title 39.

Section 485c, act Aug. 27, 1940, ch. 693, § 3, 54 Stat. 863, related to Accounting Office transactions involved in the application of sections 485a to 485c of this title. See section 2602 of Title 39.

EFFECTIVE DATE OF REPEAL

Section 11 of Pub. L. 86-682 provided that the repeal of these sections would be effective on Sept. 1, 1960.

§§ 486 to 496. Repealed. Pub. L. 85-726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806

Section 486, acts June 23, 1938, ch. 601, title IV, § 406, 52 Stat. 998; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235; Apr. 9, 1958, Pub. L. 85-373, § 1, 72 Stat. 84, related to rates for the transportation of mail. See section 1376 of this title.

Section 487, act June 23, 1938, ch. 601, title IV, § 407, 52 Stat. 1000; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, provided for accounts, records, and reports. See section 1377 of this title.

Section 488, act June 23, 1938, ch. 601, title IV, § 408, 52 Stat. 1001; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, related to consolidation, merger, and acquisition of control. See section 1378 of this title.

Section 489, act June 23, 1938, ch. 601, title IV, § 409, 52 Stat. 1002; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, related to prohibited interests. See section 1379 of this title.

Section 490, act June 23, 1938, ch. 601, title IV, § 410, 52 Stat. 1003; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, related to loans and financial aid. See section 1380 of this title.

Section 491, acts June 23, 1938, ch. 601, title IV, § 411, 52 Stat. 1003; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235; July 14, 1952, ch. 740, § 2, 66 Stat. 628, related to methods of competition. See section 1381 of this title.

Section 492, acts June 23, 1938, ch. 601, title IV, § 412, 52 Stat. 1004; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235; May 16, 1942, ch. 318, § 4(b), 56 Stat. 301, related to pooling and other agreements. See section 1382 of this title.

Section 493, act June 23, 1938, ch. 601, title IV, § 413, 52 Stat. 1004, related to form of control. See section 1383 of this title.

Section 494, act June 23, 1938, ch. 601, title IV, § 414, 52 Stat. 1004, related to legal restraints. See section 1384 of this title.

Section 495, act June 23, 1938, ch. 601, title IV, § 415, 52 Stat. 1004; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, authorized inquiries into air carrier management. See section 1385 of this title.

Section 496, act June 23, 1938, ch. 601, title IV, § 416, 52 Stat. 1004; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, provided for the classification and exemption of carriers. See section 1386 of this title.

EFFECTIVE DATE OF REPEAL

Section 1505(2) of Pub. L. 85-726, title XV, Aug. 23, 1958, 72 Stat. 810, provided that the repeal of these sections shall be effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85-726 qualifies and takes office. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

§§ 521 to 524. Repealed. Pub. L. 85-726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806

Section 521, act June 23, 1938, ch. 601, title V, § 501, 52 Stat. 1005; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, provided for the registration of aircraft nationality. See section 1401 of this title.

Section 522, act June 23, 1938, ch. 601, title V, § 502, 52 Stat. 1006; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, provided for the registration of engines, propellers, and appliances. See section 1402 of this title.

Section 523, acts June 23, 1938, ch. 601, title V, § 503, 52 Stat. 1006; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235; June 19, 1948, ch. 523, § 3, 62 Stat. 494, related to the recordation of ownership of aircraft, aircraft engines, and spare parts. See section 1403 of this title.

Section 524, act June 23, 1938, ch. 601, title V, § 504, as added June 16, 1948, ch. 482, 62 Stat. 470, related to the liability of certain persons not in possession of aircraft. See section 1404 of this title.

EFFECTIVE DATE OF REPEAL

Section 1505(2) of Pub. L. 85-726, title XV, Aug. 23, 1958, 72 Stat. 810, provided that the repeal of these sections shall be effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85-726 qualifies and takes office. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

§§ 551 to 560. Repealed. Pub. L. 85-726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806

Section 551, acts June 23, 1938, ch. 601, title VI, § 601, 52 Stat. 1007; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235; July 1, 1948, ch. 792, § 4, 62 Stat. 1217, related to the general safety powers and duties of the Board, and to the delegation of authority to the Administrator. See section 1421 of this title.

Section 552, act June 23, 1938, ch. 601, title VI, § 602, 52 Stat. 1008; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, related to airman certificates. See section 1422 of this title.

Section 553, act June 23, 1938, ch. 601, title VI, § 603, 52 Stat. 1009; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, related to aircraft certificates. See section 1423 of this title.

Section 554, act June 23, 1938, ch. 601, title VI, § 604, 52 Stat. 1010; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, related to air carrier operating certificates. See section 1424 of this title.

Section 555, act June 23, 1938, ch. 601, title VI, § 605, 52 Stat. 1010; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, provided for the maintenance of equipment in air transportation. See section 1425 of this title.

Section 556, act June 23, 1938, ch. 601, title VI, § 606, 52 Stat. 1011; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233, related to air navigation facility rating. See section 1426 of this title.

Section 557, act June 23, 1938, ch. 601, title VI, § 607, 52 Stat. 1011; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233, authorized the rating of schools, repair stations and other agencies. See section 1427 of this title.

Section 558, act June 23, 1938, ch. 601, title VI, § 608, 52 Stat. 1011; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233, related to form of applications. See section 1428 of this title.

Section 559, act June 23, 1938, ch. 601, title VI, § 609, 52 Stat. 1011; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, provided for the amendment, suspension, and revocation of certificates. See section 1429 of this title.

Section 560, acts June 23, 1938, ch. 601, title VI, § 610, 52 Stat. 1012; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235; Oct. 11, 1951, ch. 495, § 4, 65 Stat. 407, prescribed violations of sections 551 to 560 of this title. See section 1430 of this title.

EFFECTIVE DATE OF REPEAL

Section 1505(2) of Pub. L. 85-726, title XV, Aug. 23, 1958, 72 Stat. 810, provided that the repeal of these sections shall be effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85-726 qualifies and takes office. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

§§ 581, 582. Repealed. Pub. L. 85-726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806

Section 581, acts June 23, 1938, ch. 601, title VII, § 701, 52 Stat. 1012; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972, authorized the procurement of temporary services in investigation of aircraft accidents. See section 1441 of this title.

Section 582, act June 23, 1938, ch. 601, title VII, § 702, 52 Stat. 1013; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, prescribed the duties of the Board. See section 1441(a) of this title.

EFFECTIVE DATE OF REPEAL

Section 1505(2) of Pub. L. 85-726, title XV, Aug. 23, 1958, 72 Stat. 810, provided that the repeal of these sections shall be effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85-726 qualifies and takes office. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

§§ 601 to 603. Repealed. Pub. L. 85-726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806

Section 601, act June 23, 1938, ch. 601, title VIII, § 801, 52 Stat. 1014; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, related to the President of the United States. See section 1461 of this title.

Section 602, act June 23, 1938, ch. 601, title VIII, § 802, 52 Stat. 1014; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, related to the Department of State. See section 1462 of this title.

Section 603, acts June 23, 1938, ch. 601, title VIII, § 803, 52 Stat. 1014; 1940 Reorg. Plan No. IV, §§ 7, 8, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235; Aug. 8, 1946, ch. 911, 60 Stat. 944; July 7, 1958, Pub. L. 85-507, § 21(c), 72 Stat. 338, related to the Weather Bureau. See section 1463 of this title.

EFFECTIVE DATE OF REPEAL

Section 1505(2) of Pub. L. 85-726, title XV, Aug. 23, 1958, 72 Stat. 810, provided that the repeal of these sections shall be effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85-726 qualifies and takes office. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

REPEAL OF CLAUSE (8) OF SECTION 603 BY PUB. L. 85-726

Section 1401(b) of Pub. L. 85-726 provided in part that the repeal of cl. (8) of section 603 of this title by subsec. (b) of section 1401 of Pub. L. 85-726, shall not take effect in such manner as to impair the operation of the deferred repeal of such clause as provided in section 21 of the Government Employees Training Act, now covered by section 4101 et seq. of Title 5, Government Organization and Employees.

§§ 621 to 623. Repealed. Pub. L. 85-726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806

Section 621, act June 23, 1938, ch. 601, title IX, § 901, 52 Stat. 1015; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, prescribed civil penalties. See section 1471 of this title.

Section 622, acts June 23, 1938, ch. 601, title IX, § 902, 52 Stat. 1015; 1940 Reorg. Plan No. III, § 7, eff.

June 30, 1940, 5 F.R. 2109, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235; July 26, 1949, ch. 362, 62 Stat. 480; Aug. 3, 1950, ch. 517, 64 Stat. 395; July 14, 1952, ch. 740, § 3, 66 Stat. 629, prescribed criminal penalties. See section 1472 of this title.

Section 623, act June 23, 1938, ch. 601, title IX, § 903, 52 Stat. 1017; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, related to venue and prosecution of offenses. See section 1473 of this title.

EFFECTIVE DATE OF REPEAL

Section 1505(2) of Pub. L. 85-726, title XV, Aug. 23, 1958, 72 Stat. 810, provided that the repeal of these sections shall be effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85-726 qualifies and takes office. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

§§ 641 to 649. Repealed. Pub. L. 85-726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806

Section 641, act June 23, 1938, ch. 601, title X, § 1001, 52 Stat. 1017; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, related to the conduct of proceedings. See section 1481 of this title.

Section 642, act June 23, 1938, ch. 601, title X, § 1002, 52 Stat. 1018; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, related to complaints and investigations by the Board. See section 1482 of this title.

Section 643, acts June 23, 1938, ch. 601, title X, § 1003, 52 Stat. 1020; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235; May 16, 1942, ch. 318, § 4(a), 56 Stat. 300; Aug. 4, 1947, ch. 471, 61 Stat. 743, provided for Joint Boards. See section 1483 of this title.

Section 644, act June 23, 1938, ch. 601, title X, § 1004, 52 Stat. 1021; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, related to evidence. See section 1484 of this title.

Section 645, act June 23, 1938, ch. 601, title X, § 1005, 52 Stat. 1023; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, related to orders, notices, and service thereof. See section 1485 of this title.

Section 646, acts June 23, 1938, ch. 601, title X, § 1006, 52 Stat. 1024; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Aug. 28, 1958, Pub. L. 85-791, § 18, 72 Stat. 947, provided for judicial review. See section 1486 of this title.

Section 647, act June 23, 1938, ch. 601, title X, § 1007, 52 Stat. 1025; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, related to judicial enforcement. See section 1487 of this title.

Section 648, act June 23, 1938, ch. 601, title X, § 1008, 52 Stat. 1025; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, provided for participation by the Board in court proceedings. See section 1488 of this title.

Section 649, act June 23, 1938, ch. 601, title X, § 1009, 52 Stat. 1025; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, related to joinder of parties and intervention. See section 1489 of this title.

EFFECTIVE DATE OF REPEAL

Section 1505(2) of Pub. L. 85-726, title XV, Aug. 23, 1958, 72 Stat. 810, provided that the repeal of these sections shall be effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85-726 qualifies and takes office. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

§§ 671 to 681. Repealed. Pub. L. 85-726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806

Section 671, act June 23, 1938, ch. 601, title XI, § 1101, 52 Stat. 1026; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233, related to hazards of air commerce. See section 1501 of this title.

Section 672, act June 23, 1938, ch. 601, title XI, § 1102, 52 Stat. 1026; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, related to international agreements. See section 1502 of this title.

Section 673, act June 23, 1938, ch. 601, title XI, § 1103, 52 Stat. 1026; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, related to the use of documents as evidence. See section 1503 of this title.

Section 674, act June 23, 1938, ch. 601, title XI, § 1104, 52 Stat. 1026; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, related to the public disclosure of information. See section 1504 of this title.

Section 675, act June 23, 1938, ch. 601, title XI, § 1105, 52 Stat. 1027; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, provided for cooperation with governmental agencies. See section 1505 of this title.

Section 676, act June 23, 1938, ch. 601, title XI, § 1106, 52 Stat. 1027, related to exclusiveness of remedies. See section 1506 of this title.

Section 677, act June 23, 1938, ch. 601, title XI, § 1107(k), 52 Stat. 1029, provided for the repeal of inconsistent laws.

Section 678, act June 23, 1938, ch. 601, title XI, § 1108, 52 Stat. 1029; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, related to the effect of transfers, repeals, and amendments.

Section 679, act June 23, 1938, ch. 601, title XI, § 1109, 52 Stat. 1030, contained a separability clause.

Section 680, act June 23, 1938, ch. 601, title XI, § 1110, 52 Stat. 1030; 1940 Reorg. Plan No. IV, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235, prescribed the effective date of the Civil Aeronautics Act of 1938.

Section 681, act June 23, 1938, ch. 601, 52 Stat. 973, contained the short title of the Civil Aeronautics Act of 1938.

EFFECTIVE DATE OF REPEAL

Section 1505(2) of Pub. L. 85-726, title XV, Aug. 23, 1958, 72 Stat. 810, provided that the repeal of these sections shall be effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85-726 qualifies and takes office. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

§§ 682 to 685. Omitted

CODIFICATION

Section 682, act Aug. 9, 1939, ch. 633, title I, § 1, 53 Stat. 1302, which required payment for emergency food supplies stored at isolated stations, was from the Third Deficiency Appropriartion Act, fiscal year 1939, and was omitted from the Code as not repeated in subsequent appropriations acts.

Section 683, act July 10, 1952, ch. 651, title III, § 301, 66 Stat. 562, which authorized the transfer of aircraft and equipment to the Civil Aeronautics Administration by Departments of Air Force, Army, and Navy, was from the Department of Commerce Appropriation Act, 1953, and was omitted from the Code as not repeated in subsequent appropriations acts.

Provisions similar to section 683 were contained in the following acts:

Oct. 22, 1951, ch. 533, title III, § 301, 65 Stat. 587.

Sept. 6, 1950, ch. 896, ch. III, title III, § 301, 64 Stat. 621.

July 20, 1949, ch. 354, title III, § 301, 63 Stat. 464.

June 3, 1948, ch. 400, title III, § 301, 62 Stat. 323.

Section 684, act July 10, 1952, ch. 651, title III, § 301, 66 Stat. 562, which authorized transfer of air navigation and communication facilities to the Civil Aeronautics Administration by the Departments of the Air Force, Army, and Navy, was from the Department of Commerce Appropriation Act, 1953, and was omitted from the Code as not repeated in subsequent appropriations acts.

Provisions similar to section 684 were contained in the following acts:

Oct. 22, 1951, ch. 533, title III, § 301, 65 Stat. 588.

Sept. 6, 1950, ch. 896, ch. III, title III, § 301, 64 Stat. 622.

July 20, 1949, ch. 354, title III, § 301, 63 Stat. 464.

June 3, 1948, ch. 400, title III, § 301, 62 Stat. 324.

Section 685, act Oct. 22, 1951, ch. 533, title III, § 301, 65 Stat. 589, was from the Department of Commerce Appropriation Act, 1952, and was omitted from the Code as not repeated in subsequent appropriations acts.

Provisions similar to section 685 were contained in act Sept. 6, 1950, ch. 896, ch. III, title III, § 301, 64 Stat. 624.

§§ 701 to 705. Repealed. Pub. L. 85–726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806

Section 701, act June 23, 1938, ch. 601, title XII, § 1201, as added Sept. 9, 1950, ch. 938, 64 Stat. 825, declared the purpose of sections 701 to 705 of this title as the establishment of security provisions. See section 1521 of this title.

Section 702, act June 23, 1938, ch. 601, title XII, § 1202, as added Sept. 9, 1950, ch. 938, 64 Stat. 825, provided for national security regulations. See section 1522 of this title.

Section 703, act June 23, 1938, ch. 601, title XII, § 1203, as added Sept. 9, 1950, ch. 938, 64 Stat. 825, provided for security control of air traffic. See section 1522 of this title.

Section 704, act June 23, 1938, ch. 601, title XII, § 1204, as added Sept. 9, 1950, ch. 938, 64 Stat. 825, related to penalties. See section 1523 of this title.

Section 705, act June 23, 1938, ch. 601, title XII, § 1205, as added Sept. 9, 1950, ch. 938, 64 Stat. 825, provided for termination of sections 701 to 705 of this title as specified by concurrent resolution of the two Houses of Congress.

EFFECTIVE DATE OF REPEAL

Section 1505(2) of Pub. L. 85–726, title XV, Aug. 23, 1958, 72 Stat. 810, provided that the repeal of these sections shall be effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85–726 qualifies and takes office. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

§§ 711 to 722. Repealed. Pub. L. 85–726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806

Section 711, act June 23, 1938, ch. 601, title XIII, § 1301, as added June 14, 1951, ch. 123, § 1, 65 Stat. 65, related to definitions. See section 1531 of this title.

Section 712, act June 23, 1938, ch. 601, title XIII, § 1302, as added June 14, 1951, ch. 123, § 1, 65 Stat. 65, granted authority to provide insurance. See section 1532 of this title.

Section 713, act June 23, 1938, ch. 601, title XIII, § 1303, as added June 14, 1951, ch. 123, § 1, 65 Stat. 65, prescribed persons, property, and interest insurable. See section 1533 of this title.

Section 714, act June 23, 1938, ch. 601, title XIII, § 1304, as added June 14, 1951, ch. 123, § 1, 65 Stat. 66, authorized insurance of Government property. See section 1534 of this title.

Section 715, act June 23, 1938, ch. 601, title XIII, § 1305, as added June 14, 1951, ch. 123, § 1, 65 Stat. 66, provided for reinsurance. See section 1535 of this title.

Section 716, act June 23, 1938, ch. 601, title XIII, § 1306, as added June 14, 1951, ch. 123, § 1, 65 Stat. 66, established an insurance fund. See section 1536 of this title.

Section 717, act June 23, 1938, ch. 601, title XIII, § 1307, as added June 14, 1951, ch. 123, § 1, 65 Stat. 67, related to administrative provisions. See section 1537 of this title.

Section 718, act June 23, 1938, ch. 601, title XIII, § 1308, as added June 14, 1951, ch. 123, § 1, 65 Stat. 68, related to airmen's rights. See section 1538 of this title.

Section 719, act June 23, 1938, ch. 601, title XIII, § 1309, as added June 14, 1951, ch. 123, § 1, 65 Stat. 68, provided for reports to Congress. See section 1539 of this title.

Section 720, act June 23, 1938, ch. 601, title XIII, § 1310, as added June 14, 1951, ch. 123, § 1, 65 Stat. 68, provided for actions on claims for losses. See section 1540 of this title.

Section 721, act June 23, 1938, ch. 601, title XIII, § 1311, as added June 14, 1951, ch. 123, § 1, 65 Stat. 69, provided for additional insurance with other underwriters. See section 1541 of this title.

Section 722, act June 23, 1938, ch. 601, title XIII, § 1312, as added June 14, 1951, ch. 123, § 1, 65 Stat. 69 and amended July 20, 1956, ch. 655, 70 Stat. 594, related to the expiration of authority to provide insurance. See section 1542 of this title.

EFFECTIVE DATE OF REPEAL

Section 1505(2) of Pub. L. 85–726, title XV, Aug. 23, 1958, 72 Stat. 810, provided that the repeal of these sections shall be effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85–726 qualifies and takes office. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

CHAPTER 10—TRAINING OF CIVIL AIRCRAFT PILOTS

§§ 751 to 754. Omitted

CODIFICATION

Section 751, act June 27, 1939, ch. 244, § 1, 53 Stat. 855, which related to the short title of act, was omitted from the Code as expired. See section 757 of this title.

Section 752, act June 27, 1939, ch. 244, § 2, 53 Stat. 855; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233; July 24, 1942, ch. 522, 56 Stat. 704; June 10, 1943, ch. 121, § 1, 57 Stat. 150, which related to training programs, rules and regulations, racial, etc., discrimination, and facilities and personnel, was omitted from the Code as expired. See section 757 of this title.

Section 753, act June 27, 1939, ch. 244, § 3, 53 Stat. 856, which related to percentage of non-college students, was omitted from the Code as expired. See section 757 of this title.

Section 754, act June 27, 1939, ch. 244, § 4, 53 Stat. 856; 1940 Reorg. Plan No. III, § 7, eff. June 30, 1940, 5 F.R. 2109, 54 Stat. 1233, which related to lease, exchange, and acceptance of loans of property, was omitted from the Code as expired. See section 757 of this title.

§§ 755, 756. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 650

Section 755, act June 27, 1939, ch. 244, § 5, 53 Stat. 856, related to powers of Administrator, appointment and compensation of personnel, and contracts.

Section 756, act June 27, 1939, ch. 244, § 6, 53 Stat. 856, related to cooperation of other agencies and loan or transfer of personnel and equipment.

§§ 757, 758. Omitted

CODIFICATION

Section 757, acts June 27, 1939, ch. 244, § 7, 53 Stat. 856; June 30, 1944, ch. 333, 58 Stat. 648, which related

to appropriations, forbade training of aliens, and provided that sections 751 to 757 of this title expire July 1, 1946, was omitted from the Code as expired pursuant to its own terms.

Section 758, act May 7, 1943, ch. 94, 57 Stat. 80, which related to compensation for war training service, was omitted as obsolete, since the training program for pilots, technicians, and mechanics under sections 751 to 757 of this title has expired.

APPROPRIATIONS

Act June 10, 1943, ch. 121, § 2, 57 Stat. 150, provided that appropriations for fiscal year ending June 30, 1943, were available to carry out the provisions of sections 751 to 757 of this title, as amended by the Act.

CHAPTER 11—SEIZURE AND FORFEITURE OF CARRIERS TRANSPORTING, ETC., CONTRABAND ARTICLES

Sec.
781. Unlawful use of vessels, vehicles, and aircrafts; contraband article defined.
782. Seizure and forfeiture.
783. Designation of officers by Secretary of Treas-ury; duties of officers.
784. Application of related laws.
785. Availability of appropriations.
786. Construction with other laws.
787. Definitions.
788. Rules and regulations.
789. Guam; enforcement and administration of chapter.

§ 781. Unlawful use of vessels, vehicles, and aircrafts; contraband article defined

(a) It shall be unlawful (1) to transport, carry, or convey any contraband article in, upon, or by means of any vessel, vehicle, or aircraft; (2) to conceal or possess any contraband article in or upon any vessel, vehicle, or aircraft, or upon the person of anyone in or upon any vessel, vehicle, or aircraft; or (3) to use any vessel, vehicle, or aircraft to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any contraband article.

(b) As used in this section, the term "contraband article" means—

(1) Any narcotic drug which has been or is possessed with intent to sell or offer for sale in violation of any laws or regulations of the United States dealing therewith; or which has been acquired or is possessed, sold, transferred, or offered for sale, in violation of any laws of the United States dealing therewith; or which has been acquired by theft, robbery, or burglary and carried or transported within any Territory, possession, or the District of Columbia, or from any State, Territory, possession, the District of Columbia, or the Canal Zone, to another State, Territory, possession, the District of Columbia, or the Canal Zone; or which does not bear appropriate tax-paid internal-revenue stamps as required by law or regulations;

(2) Any firearm, with respect to which there has been committed any violation of any provision of the National Firearms Act or any regulation issued pursuant thereto; or

(3) Any falsely made, forged, altered, or counterfeit coin or obligation or other security of the United States or of any foreign government; or any material or apparatus, or paraphernalia fitted or intended to be used, or which shall have been used, in the making of any such falsely made, forged, altered, or counterfeit coin or obligation or other security.

(Aug. 9, 1939, ch. 618, § 1, 53 Stat. 1291; Aug. 9, 1950, ch. 655, 64 Stat. 427.)

REFERENCES IN TEXT

The National Firearms Act, referred to in subsec. (b)(2), is act June 26, 1934, ch. 757, 48 Stat. 1236, which was classified generally to chapter 15A (§ 1132 et seq.) of former Title 26, Internal Revenue, and was repealed by act Feb. 10, 1939, ch. 2, § 4, 53 Stat. 1. See chapter 53 (§ 5801 et seq.) of Title 26, Internal Revenue Code.

AMENDMENTS

1950—Subsec. (b)(1). Act Aug. 9, 1950, expanded the definition of "Contraband article" as that definition relates to narcotic drugs thus increasing the situations in which vessels, vehicles, and aircraft used in illegal traffic of narcotic drugs may be seized and forfeited.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 782 of this title.

§ 782. Seizure and forfeiture

Any vessel, vehicle, or aircraft which has been or is being used in violation of any provision of section 781 of this title, or in, upon, or by means of which any violation of said section has taken or is taking place, shall be seized and forfeited: *Provided*, That no vessel, vehicle, or aircraft used by any person as a common carrier in the transaction of business as such common carrier shall be forfeited under the provisions of this chapter unless it shall appear that (1) in the case of a railway car or engine, the owner, or (2) in the case of any other such vessel, vehicle, or aircraft, the owner or the master of such vessel or the owner or conductor, driver, pilot, or other person in charge of such vehicle or aircraft was at the time of the alleged illegal act a consenting party or privy thereto: *Provided further*, That no vessel, vehicle, or aircraft shall be forfeited under the provisions of this chapter by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such vessel, vehicle, or aircraft was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States, or of any State.

(Aug. 9, 1939, ch. 618, § 2, 53 Stat. 1291.)

REFERENCES IN TEXT

The criminal laws of the United States, referred to in text, are classified generally to Title 18, Crimes and Criminal Procedure.

§ 783. Designation of officers by Secretary of Treasury; duties of officers

The Secretary of the Treasury is empowered to authorize, or designate, officers, agents, or other persons to carry out the provisions of this chapter. It shall be the duty of any officer, agent, or other person so authorized or designated, or authorized by law, whenever he shall discover any vessel, vehicle, or aircraft which has been or is being used in violation of any of the provisions of this chapter, or in, upon, or by means of which any violation of this chapter has taken or is taking place, to seize such

vessel, vehicle, or aircraft and to place it in the custody of such person as may be authorized or designated for that purpose by the Secretary of the Treasury, to await disposition pursuant to the provisions of this chapter and any regulations issued hereunder.

(Aug. 9, 1939, ch. 618, § 3, 53 Stat. 1292.)

§ 784. Application of related laws

All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of vessels and vehicles for violation of the customs laws; the disposition of such vessels and vehicles or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as applicable and not inconsistent with the provisions hereof: *Provided*, That such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels and vehicles under the customs laws shall be performed with respect to seizures and forfeitures of vessels, vehicles, and aircraft under this chapter by such officers, agents, or other persons as may be authorized or designated for that purpose by the Secretary of the Treasury.

(Aug. 9, 1939, ch. 618, § 4, 53 Stat. 1292.)

REFERENCES IN TEXT

The customs laws, referred to in text, are classified generally to Title 19, Customs Duties.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of the Treasury, with certain exceptions, to the Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. The collector of customs, referred to in this section, was an officer of the Treasury Department.

CROSS REFERENCES

Award of compensation to informers, custom laws, see section 1619 of Title 19, Customs Duties.
Remission or mitigation of forfeitures—
Custom laws, see section 1618 of Title 19.
Internal revenue laws, see section 7327 of Title 26, Internal Revenue Code.
Liquor laws, see section 3617 of Title 18, Crime and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 789 of this title.

§ 785. Availability of appropriations

Any appropriation which has been or shall hereafter be made for the enforcement of the customs, narcotics, counterfeiting, or internal-revenue laws, and the provisions of the National Firearms Act shall be available for the defraying of expenses of carrying out the provisions of this chapter.

(Aug. 9, 1939, ch. 618, § 5, 53 Stat. 1292.)

REFERENCES IN TEXT

The customs laws, referred to in text, are classified generally to Title 19, Customs Duties.

The internal revenue laws, referred to in text, are classified generally to Title 26, Internal Revenue Code.

The National Firearms Act, referred to in text, is act June 26, 1934, ch. 757, 48 Stat. 1236, which was classified generally to chapter 15A (§ 1132 et seq.) of former Title 26, Internal Revenue, and was repealed by act Feb. 10, 1939, ch. 2, § 4, 53 Stat. 1. See chapter 53 (§ 5801 et seq.) of Title 26, Internal Revenue Code.

§ 786. Construction with other laws

The provisions of this chapter shall be construed to be supplemental to, and not to impair in any way, existing provisions of law imposing fines, penalties, or forfeitures; or providing for the seizure, condemnation, or disposition of forfeited property or the proceeds thereof; or authorizing the remission or mitigation of fines, penalties, or forfeitures.

(Aug. 9, 1939, ch. 618, § 6, 53 Stat. 1292.)

§ 787. Definitions

When used in this chapter—

(a) The term "vessel" includes every description of watercraft or other contrivance used, or capable of being used, as means of transportation in water, but does not include aircraft;

(b) The term "vehicle" includes every description of carriage or other contrivance used, or capable of being used, as means of transportation on, below, or above the land, but does not include aircraft;

(c) The term "aircraft" includes every description of craft or carriage or other contrivance used, or capable of being used, as means of transportation through the air;

(d) The term "narcotic drug" shall have the meaning given that term by section 802(16) of title 21 and shall also include marihuana as defined by section 802(15) of such title;

(e) The term "firearm" means any firearm, as now or hereafter defined by the National Firearms Act or the regulations issued thereunder; and

(f) The words "obligation or other security of the United States" are used as now or hereafter defined in section 8 of title 18.

(Aug. 9, 1939, ch. 618, § 7, 53 Stat. 1292; Oct. 31, 1951, ch. 655, § 55(b), 65 Stat. 729; Oct. 27, 1970, Pub. L. 91-513, title III, § 1102(r), 84 Stat. 1294.)

REFERENCES IN TEXT

The National Firearms Act, referred to in subsec. (e), is act June 26, 1934, ch. 757, 48 Stat. 1236, which was classified generally to chapter 15A (§ 1132 et seq.) of former Title 26, Internal Revenue, and was repealed by act Feb. 10, 1939, ch. 2, § 4, 53 Stat. 1. See chapter 53 (§ 5801 et seq.) of Title 26, Internal Revenue Code.

AMENDMENTS

1970—Subsec. (d). Pub. L. 91-513 substituted sections 802(16) and 802(15) of title 21 for the Narcotic Drugs Import and Export Act, the internal-revenue laws, or the regulations issued thereunder, and the Marihuana Tax Act of 1937 and the regulations issued thereunder as the sections in which to find the definitions of "narcotic drug" and "marihuana", respectively.

1951—Subsec. (f). Act Oct. 31, 1951, substituted "8 of title 18" for "261 of title 18".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91-513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

SAVINGS PROVISIONS

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91-513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91-513, set out as a Savings Provisions note under section 171 of Title 21, Food and Drugs.

§ 788. Rules and regulations

The Secretary of the Treasury shall prescribe such rules and regulations as may be necessary to carry out the provisions of this chapter.

(Aug. 9, 1939, ch. 618, § 8, 53 Stat. 1293.)

§ 789. Guam; enforcement and administration of chapter

(a) In Guam the enforcement and administration of this chapter shall be performed by the Governor of Guam, acting through such officers of the Government of Guam as he may designate.

(b) The Governor of Guam is authorized to carry out the provisions of the related laws set forth in section 784 of this title, with such modifications as he shall deem necessary to meet special conditions on Guam; and the Governor is further authorized to make such rules and regulations as may be necessary to carry out the provisions of this chapter on Guam.

(Aug. 9, 1939, ch. 618, § 9, as added Aug. 1, 1956, ch. 852, § 22, 70 Stat. 911.)

CHAPTER 12—INTERSTATE COMMERCE ACT, PART III; WATER CARRIERS

Sec.
901. Short title.
902. Definitions.
903. Application of provisions.
(a) Applicability of chapter 1 of this title.
(b) Transportation by water carrier of commodities in bulk.
(c) Transportation by contract carrier by water of commodities in bulk.
(d) Transportation by water of liquid cargoes in bulk.
(e) Transportation of passengers between points in United States by way of foreign port or ports; transportation by contract carriers by water not competitive; certain common carriers by motor vehicles.
(f) Transportation by water carrier by railroad or motor carrier; transportation by water by any person for a common carrier by railroad, etc.
(g) Transportation by water solely within single harbor or contiguous harbors.
(h) Transportation by carrier of property of owner of all of the voting stock of such carrier.
(i) Carriers owned or controlled by the United States.
(j) State power to regulate intrastate commerce.
(k) Intrastate transportation rates.
(l) Transportation period without certificate or permit.
904. General powers and duties of the Commission.
(a) Rules, regulations, and orders.
(b) Investigations and reports.
(c) Establishment of classifications.
(d) Exemptions.
(e) Enforcement.
905. Duties of common carriers by water.
(a) Rates, fares, charges, and practices.
(b) Through routes.
(c) Preferences or advantages.
(d) Reasonable, proper, and equal facilities.
906. Tariffs and schedules.
(a) Filing, printing, and maintenance of tariffs.
(b) Statement of charges.
(c) Amount chargeable.
(d) Filing as precondition to transportation.
(e) Reasonable minimum rates and charges; practices.
907. Commission authority over rates.
(a) Complaints.
(b) Prescription of lawful rates, fares, or charges.
(c) Evidence.
(d) Establishment of through routes, joint classifications, or joint rates.
(e) Prescription of lawful divisions of joint rates, fares, or charges.
(f) Factors considered in prescription of rates.
(g) Investigations of new schedules.
(h) Prescription of lawful minimum rates or charges.
(i) Hearings regarding lawful charges and practices.
908. Reparation awards.
(a) Carrier.
(b) Damages.
(c) Remedies.
(d) Orders directing payment.
(e) Actions to enforce payment orders.
(f) Limitation of actions.
(g) Parties.
909. Certificates of public convenience and necessity.
(a) Precondition to transportation; certain operational common carriers by water.
(b) Applications.
(c) Issuance.
(d) Specifications; terms and conditions.
(e) Rights conferred.
(f) Contract carrier permits.
(g) Permit applications.
910. Dual operations under certificates and permits.
911. Temporary operations.
912. Transfer of certificates and permits.
912a. Revocation of certificates and permits.
913. Accounts, records, and reports.
(a) Required reports; form; contents.
(b) Filing of contracts.
(c) Uniform system of accounts.
(d) Depreciation charges.
(e) Forms of accounts, records, and memoranda.
(f) Inspection of records.
(g) Preservation of records.
(h) Definitions.
914. Allowances to shippers for transportation services.
915. Notices and orders.
(a) Designated agent for service; service.
(b) Hearings and investigation.
(c) Suspension or modification of orders.

Sec.
(d) Effective date of orders; duration.
(e) Compliance.
916. Enforcement and procedure.
(a) Application of other sections.
(b) Application to district court for enforcement.
(c) Record of hearings; publication.
(d) Schedules and tariffs as public records.
917. Unlawful acts and penalties.
(a) Intentional violations of chapter.
(b) Rebates and concessions.
(c) Solicitation of rebates and concessions.
(d) Refusal to comply with commission.
(e) Concealment of information by commission agents.
(f) Release of information improperly by carrier or agents thereof.
918. Collection of rates and charges.
919. Employees.
920. Repeals.
(a) Shipping provisions repealed.
(b) Shipping provisions not repealed.
(c) Transportation not subject to this chapter.
(d) Navigation laws, admiralty jurisdiction, liabilities of vessels.
(e) Transportation and terminal facilities.
921. Transfers to commission.
(a) Employees.
(b) Records and property.
(c) Authorized appropriations.
922. Pending matters.
(a) Orders, rules, regulations, etc.
(b) Proceedings or investigations.
(c) Judicial proceedings.
922a. Recording of evidences of equipment indebtedness.
922b. Filing of information return or other report for income tax purposes with State or subdivision by water carrier on compensation paid to interstate employees.
(a) Filing or reporting where employee resides and where employee earns more than 50 per centum of compensation paid by carrier to him; applicability to masters, officers, and seamen.
(b) State or subdivision where employee deemed to have earned more than 50 per centum of compensation.
(c) Definitions.
923. Separability of provisions.

INTERSTATE COMMERCE ACT

The Interstate Commerce Act of Feb. 4, 1887, ch. 104, 24 Stat. 379, as it existed prior to its division into parts, is embodied in chapter 1 (§ 1 et seq.) of this title. The original act was designated "part I" and a new part II, comprising chapter 8 (§ 301 et seq.) of this title, was added by act Aug. 9, 1935, ch. 498, 49 Stat. 543. Part III, constituting this chapter, was added by act Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 929. Part IV, constituting chapter 13 (§ 1001 et seq.) of this title, was added by act May 16, 1942, ch. 318, § 1, 56 Stat. 284. Part V, constituting chapter 19 (§ 1231 et seq.) of this title, was added by Pub. L. 85-625, § 2, Aug. 12, 1958, 72 Stat. 568.

NATIONAL TRANSPORTATION POLICY

Act Sept. 18, 1940, ch. 722, title I, § 1, 54 Stat. 899, amended the Interstate Commerce Act, chapters 1, 8, 12, 13, and 19 (§§ 1 et seq., 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title, by inserting before part I thereof (chapter 1 of this title) the following provision entitled "National Transportation Policy": "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this act shall be administered and enforced with a view to carrying out the above declaration of policy."

CROSS REFERENCES

Appeals to Supreme Court, see section 45 of this title.

Charges for long and short hauls and on through route, prohibitions, see section 4 of this title.

Combinations and consolidations of carriers, prohibitions, see section 5 of this title.

Common carriers by railroad, duty to establish reasonable through routes with common carriers by water subject to this chapter, see section 1 of this title.

Exchange of telephone, telegraph, or cable services, see section 1 of this title.

Expedition of actions by United States under this chapter involving general public importance, see section 44 of this title.

Interchange of traffic, connecting line defined, see section 3 of this title.

Intervention of representatives of employees, see section 17 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1, 3, 4, 5, 5b, 13, 15, 302, 1002, 1004, 1008, 1010, 1011 of this title; title 26 section 7701; title 46 sections 804, 883-1; title 50 App. section 1216.

§ 901. Short title

This chapter may be cited as part III of the Interstate Commerce Act.

(Feb. 4, 1887, ch. 104, pt. III, § 301, as added Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 929.)

EFFECTIVE DATE

Section 202 of act Sept. 18, 1940, provided that: "Part III of the Interstate Commerce Act [this chapter] shall take effect on the date of the enactment of this Act [Sept. 18, 1940], except that sections 304(c), 305 to 308, inclusive, 309(a) and (f), 313 to 318, inclusive, 320, 321, and 322 (904(c), 905 to 908, 909(a) and (f), 913 to 918, 920, 921, and 922 of this title) shall take effect on the 1st day of January 1941: *Provided, however,* That the Interstate Commerce Commission shall, if found by it necessary or desirable in the public interest, by general or special order postpone the taking effect of any of the provisions above enumerated to such time, but not beyond the 1st day of April 1942, as the Commission shall prescribe."

SHORT TITLE OF INTERSTATE COMMERCE ACT

For Short Title of Interstate Commerce Act, see section 1 of act Sept. 18, 1940, set out as a Short Title note preceding section 1 of this title.

§ 902. Definitions

For the purposes of this chapter—

(a) The term "person" includes any individual, firm, copartnership, corporation, company,

association, joint stock association, and any trustee, receiver, assignee, or personal representative thereof.

(b) The term "Commission" means the Interstate Commerce Commission.

(c) The term "water carrier" means a common carrier by water or a contract carrier by water.

(d) The term "common carrier by water" means any person which holds itself out to the general public to engage in the transportation by water in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, except transportation by water by an express company subject to chapter 1 of this title in the conduct of its express business, which shall be considered to be and shall be regulated as transportation subject to chapter 1 of this title.

(e) The term "contract carrier by water" means any person which, under individual contracts or agreements, engages in the transportation (other than transportation referred to in paragraph (d) of this section and the exception therein) by water of passengers or property in interstate or foreign commerce for compensation.

The furnishing for compensation (under a charter, lease, or other agreement) of a vessel, to a person other than a carrier subject to this Act, to be used by the person to whom such vessel is furnished in the transportation of its own property, shall be considered to constitute, as to the vessel so furnished, engaging in transportation for compensation by the person furnishing such vessel, within the meaning of the foregoing definition of "contract carrier by water". Whenever the Commission, upon its own motion or upon application of any interested party, determines that the application of the preceding sentence to any person or class of persons is not necessary in order to effectuate the national transportation policy declared in this Act, it shall by order exempt such person or class of persons from the provisions of this chapter for such period of time as may be specified in such order. The Commission may by order revoke any such exemption whenever it shall find that the application of such sentence to the exempted person or class of persons is necessary in order to effectuate such national transportation policy. No such exemption shall be denied or revoked except after reasonable opportunity for hearing.

(f) The term "vessel" means any watercraft or other artificial contrivance of whatever description which is used, or is capable of being, or is intended to be, used as a means of transportation by water.

(g) The term "transportation facility" includes any vessel, warehouse, wharf, pier, dock, yard, grounds, or any other instrumentality or equipment of any kind, used in or in connection with transportation by water subject to this chapter.

(h) The term "transportation" includes the use of any transportation facility (irrespective of ownership or of any contract, express or implied, for such use), and includes any and all services in or in connection with transportation, including the receipt, delivery, elevation, transfer in transit, refrigeration or icing, ventilation, storage, and handling of property transported or the interchange thereof with any other agency of transportation.

(i) The term "interstate or foreign transportation" or "transportation in interstate or foreign commerce", as used in this chapter, means transportation of persons or property—

(1) wholly by water from a place in a State to a place in any other State, whether or not such transportation takes place wholly in the United States;

(2) partly by water and partly by railroad or motor vehicle, from a place in a State to a place in any other State; except that with respect to such transportation taking place partly in the United States and partly outside thereof, such terms shall include transportation by railroad or motor vehicle only insofar as it takes place within the United States, and shall include transportation by water only insofar as it takes place from a place in the United States to another place in the United States;

(3) wholly by water, or partly by water and partly by railroad or motor vehicle, from or to a place in the United States to or from a place outside the United States, but only (A) insofar as such transportation by rail or by motor vehicle takes place within the United States, and (B) in the case of a movement to a place outside the United States, only insofar as such transportation by water takes place from any place in the United States to any other place therein prior to transshipment at a place within the United States for movement to a place outside thereof, and, in the case of a movement from a place outside the United States, only insofar as such transportation by water takes place from any place in the United States to any other place therein after transshipment at a place within the United States in a movement from a place outside thereof.

(j) The term "United States" means the States of the United States and the District of Columbia.

(k) The term "State" means a State of the United States or the District of Columbia.

(*l*) The term "common carrier by railroad" means a common carrier by railroad subject to the provisions of chapter 1 of this title.

(m) The term "common carrier by motor vehicle" means a common carrier by motor vehicle subject to the provisions of chapter 8 of this title.

(Feb. 4, 1887, ch. 104, pt. III, § 302, as added Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 929.)

REFERENCES IN TEXT

This Act, referred to in subsec. (e), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, which is classified generally to this chapter (§ 901 et seq.) and chapters 1, 8, 13, and 19 (§§ 1 et seq., 301 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

The national transportation policy declared in the Interstate Commerce Act, referred to in subsec. (e), is set out as a note preceding section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 903 of this title.

§ 903. Application of provisions

(a) Applicability of chapter 1 of this title

In the case of transportation which is subject both to this chapter and chapter 1 of this title, the provisions of chapter 1 of this title shall apply only to the extent that chapter 1 of this title imposes, with respect to such transportation, requirements not imposed by the provisions of this chapter.

(b) Transportation by water carrier of commodities in bulk

Nothing in this chapter shall apply to the transportation by a water carrier of commodities in bulk. This subsection shall apply only in the case of commodities in bulk which are (in accordance with the existing custom of the trade in the handling and transportation of such commodities as of June 1, 1939) loaded and carried without wrappers or containers and received and delivered by the carrier without transportation mark or count. This subsection shall not apply to transportation subject, at the time this part takes effect, to the provisions of the Intercoastal Shipping Act, 1933, as amended [46 U.S.C. 843 et seq.].

(c) Transportation by contract carrier by water of commodities in bulk

Nothing in this chapter shall apply to transportation by a contract carrier by water of commodities in bulk in a non-ocean-going vessel on a normal voyage during which (1) the cargo space of such vessel is used for the carrying of not more than three such commodities, and (2) such vessel passes within or through waters which are made international for navigation purposes by any treaty to which the United States is a party.

(d) Transportation by water of liquid cargoes in bulk

Nothing in this chapter shall apply to the transportation by water of liquid cargoes in bulk in tank vessels designed for use exclusively in such service and certified under regulations approved by the Commandant of the Coast Guard pursuant to the provisions of section 391a of title 46.

(e) Transportation of passengers between points in United States by way of foreign port or ports; transportation by contract carriers by water not competitive; certain common carriers by motor vehicles

(1) Notwithstanding any provision of this chapter the Commission may, by order, from time to time, upon application, or upon its own initiative without application, exempt from the requirements of this chapter the transportation of passengers between points in the United States by way of a foreign port or ports, upon a finding that application of such requirements thereto is not necessary to carry out the national transportation policy declared in this Act.

(2) It is declared to be the policy of Congress to exclude from the provisions of this chapter, in addition to the transportation otherwise excluded under this section, transportation by contract carriers by water which, by reason of the inherent nature of the commodities transported, their requirement of special equipment or their shipment in bulk, is not actually and substantially competitive with transportation by any common carrier subject to this chapter or chapter 1 or 8 of this title. Upon application of a carrier, made in such manner and form as the Commission may by regulations prescribe, the Commission shall, subject to such reasonable conditions and limitations as the Commission may prescribe, by order exempt from the provisions of this chapter such of the transportation engaged in by such carrier as it finds necessary to carry out the policy above declared. A carrier (other than a carrier subject, at the time this chapter takes effect, to the provisions of the Intercoastal Shipping Act, 1933, as amended [46 U.S.C. 843 et seq.]) making such application prior to January 1, 1941, shall be exempt from the provisions of this chapter until a final determination has been made upon such application if such carrier or a predecessor in interest was in bona fide operation as a contract carrier by water on January 1, 1940, over the route or routes or between the ports with respect to which application is made and has so operated since that time (or, if engaged in furnishing seasonal service only, was in bona fide operation during the seasonal period, prior to or including such date, for operations of the character in question) except, in either event, for interruptions of service over which such carrier or its predecessor in interest had no control.

(3) Notwithstanding any other provision of this Act, any common carrier by motor vehicle which was engaged also in operations between the United States and Alaska as a common carrier by water subject to regulation by the Federal Maritime Board under the Shipping Act of 1916, as amended [46 U.S.C. 801 et seq.], and the Intercoastal Shipping Act of 1933, as amended [46 U.S.C. 843 et seq.], prior to January 3, 1959, and has so operated since that time, shall as to such operations, remain subject to the jurisdiction of the Federal Maritime Board.

(f) Transportation by water carrier by railroad or motor carrier; transportation by water by any person for a common carrier by railroad, etc.

Notwithstanding any provision of this section or of section 902 of this title the provisions of this chapter shall not apply—

(1) to transportation by water by a carrier by railroad subject to chapter 1 of this title or by a motor carrier subject to chapter 8 of this title, incidental to transportation subject to such chapters, in the performance within terminal areas of transfer, collection, or delivery services, or in the performance of floatage, car ferry, lighterage, or towage; but such transportation shall be considered to be transportation subject to chapter 1 of this title when performed by such carrier by railroad, and transportation subject to chapter 8 of this title when performed by such motor carrier.

(2) to transportation by water by any person (whether as agent or under a contractual arrangement) for a common carrier by railroad subject to chapter 1 of this title, an express company subject to chapter 1 of this title, a motor carrier subject to chapter 8 of this title, or a water carrier subject to this chapter, in the performance within terminal

areas of transfer, collection, or delivery services, or in the performance of floatage, car ferry, lighterage, or towage; but such transportation shall be considered to be performed by such carrier or express company as part of, and shall be regulated in the same manner as, the transportation by railroad, express, motor vehicle, or water to which such services are incidental.

(g) Transportation by water solely within single harbor or contiguous harbors

Except to the extent that the Commission shall from time to time find, and by order declare, that such application is necessary to carry out the national transportation policy declared in this Act, the provisions of this chapter shall not apply (1) to transportation in interstate commerce by water solely within the limits of a single harbor or between places in contiguous harbors, when such transportation is not a part of a continuous through movement under a common control, management, or arrangement to or from a place without the limits of any such harbor or harbors, or (2) to transportation by small craft of not more than one hundred tons carrying capacity or not more than one hundred indicated horsepower, or to vessels carrying passengers only and equipped to carry no more than sixteen passengers, or to ferries, or to the movement by water carriers of contractors' equipment employed or to be employed in construction or repair for such water carrier, or to the operation of salvors.

(h) Transportation by carrier of property of owner of all of the voting stock of such carrier

The Commission shall have the power to determine, upon its own motion or upon application of any party in interest, whether any water carrier is engaged solely in transporting the property of a person which owns all or substantially all of the voting stock of such carrier. Upon so finding the Commission shall issue a certificate of exemption to such carrier, and such carrier shall not be subject to the provisions of this chapter during the period such certificate shall remain in effect. At any time after the issuance of such certificate the Commission may by order revoke such certificate if it finds that such carrier is no longer entitled to the exemption under the foregoing provisions of this subsection. Upon revocation of any such certificate the Commission shall restore to such carrier, without further proceedings, the authority, if any, to engage in transportation subject to the provisions of this chapter held by such carrier at the time the certificate of exemption pertaining to such carrier became effective. No certificate of exemption shall be denied and no order of revocation shall be issued, under this subsection, except after reasonable opportunity for hearing.

(i) Carriers owned or controlled by the United States

In the application of the provisions of this chapter to any carrier owned or controlled by the United States, no different policy, rule of rate making, system of accounting, or method of determining costs of service, value of property, or rate of return shall be applied than is applied in the case of carriers not so owned or controlled.

(j) State power to regulate intrastate commerce

Nothing in this chapter shall be construed to interfere with the exclusive exercise by each State of the power to regulate intrastate commerce by water carriers within the jurisdiction of such State.

(k) Intrastate transportation rates

Nothing in this chapter shall authorize the Commission to prescribe or regulate any rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose.

***(l)* Transportation period without certificate or permit**

Whenever transportation exempted under the provisions of subsection (g) of this section, or by order of the Commission under subsection (e) of this section, becomes subject to the provisions of this chapter, the carrier may continue to engage in such transportation for a period of one hundred and twenty days without a certificate or permit covering such transportation, and, if application for a certificate or permit covering such transportation is made to the Commission within such period, the Commission shall, without further proceedings, issue to the carrier a certificate or permit, whichever is appropriate, authorizing such transportation previously exempted.

(Feb. 4, 1887, ch. 104, pt. III, § 303, as added Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 931, and amended 1946 Reorg. Plan No. 3, § 101, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1097; June 12, 1948, ch. 457, 62 Stat. 386; July 12, 1960, Pub. L. 86-615, § 8, 74 Stat. 386; Dec. 28, 1970, Pub. L. 91-590, § 1, 84 Stat. 1587; Dec. 27, 1973, Pub. L. 93-201, § 1, 87 Stat. 838.)

REFERENCES IN TEXT

The Intercoastal Shipping Act, 1933, referred to in subsecs. (b), (e)(2), (3), is act Mar. 3, 1933, ch. 199, 47 Stat. 1425, as amended, which is classified generally to chapter 23A (§ 843 et seq.) of Title 46, Shipping. For complete classification of this Act to the Code, see section 848 of Title 46 and Tables volume.

The national transportation policy, referred to in subsecs. (e)(1) and (g), is set out as a note preceding section 901 of this title.

This Act, referred to in subsecs. (e)(1), (3), (g), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 901 et seq.) and chapters 1, 8, 13, and 19 (§§ 1 et seq., 301 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

The Shipping Act of 1916, as amended, referred to in subsec. (e)(3), is act Sept. 7, 1916, ch. 451, 39 Stat. 728, as amended, which is classified principally to chapter 23 (§ 801 et seq.) of Title 46, Shipping. For complete classification of this Act to the Code, see section 842 of Title 46 and Tables volume.

AMENDMENTS

1973—Subsec. (b). Pub. L. 93-201 struck out provisions requiring that vessel cargo spaces be used for carrying not more than three bulk commodities, provisions relating to the concurrent transportation of commodities in bulk in the same vessel with other commodities, and provisions defining vessel.

1970—Subsec. (b). Pub. L. 91-590 added the provision that the exemption afforded under this subsection to

the transportation by a water carrier of commodities in bulk would not be lost by the concurrent transportation in the same vessel of other commodities.

1960—Subsec. (e). Pub. L. 86-615 added par. (3).

1948—Subsec. (e). Act June 12, 1948, exempted from this chapter vacation cruise travel from ports in the United States to various foreign ports, including round-the-world cruises, with termination of the cruise at a port in another State of the United States.

TRANSFER OF FUNCTIONS

The Coast Guard, referred to in subsec. (d), was transferred to the Department of Transportation, and all functions, powers, and duties relating to the Coast Guard of the Secretary of the Treasury and of all other officers and offices of the Department of the Treasury were transferred to the Secretary of Transportation by Pub. L. 89-670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89-670, however, provided that notwithstanding such transfer of functions, the Coast Guard shall operate as part of the Navy in time of war or when the President directs as provided in section 3 of Title 14, Coast Guard. See section 1655(b) of this title.

For transfer of functions of other officers, employees, and agencies of the Department of the Treasury, with certain exceptions, to the Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Functions of the Coast Guard, and the Commandant of the Coast Guard, were excepted from transfer when the Coast Guard is operating as part of the Navy under sections 1 and 3 of Title 14.

"Commandant of the Coast Guard" was substituted for "Secretary of Commerce" in subsec. (d) on authority of sections 101 to 104 of Reorg. Plan No. 3 of 1946, set out in the Appendix to Title 5.

Sections 101 and 304 of Reorg. Plan No. 7 of 1961, set out in the Appendix to Title 5, Government Organization and Employees, respectively established the Federal Maritime Commission and abolished the Federal Maritime Board, referred to in subsec. (e)(3). Sections 103 and 202 of Reorg. Plan No. 7 of 1961 transferred functions of the Federal Maritime Board either to the Federal Maritime Commission or to the Secretary of Commerce.

IMPLEMENTATION OF RECOMMENDATIONS OF SECRETARY OF TRANSPORTATION FOR REPEAL OF THREE COMMODITY RESTRICTION AND NO-MIXING RULE

Sections 2 and 3 of Pub. L. 91-590, Dec. 28, 1970, 84 Stat. 1587 which limited the duration of the amendment of subsec. (b) of this section by Pub. L. 91-590 to three years, required the Secretary of Transportation to undertake a study of the system of economic regulation of dry bulk commodity transportation and report to Congress with recommendations for legislation, and required water carriers operating under the exemption under subsec. (b) of this section, as amended by Pub. L. 91-590, to file such reports containing such information as the Secretary of Transportation may prescribe in the conduct of the study, were repealed by section 2 of Pub. L. 93-201, Dec. 27, 1973, 87 Stat. 838.

ADMISSION OF ALASKA AS STATE

Alaska was admitted into the Union on Jan. 3, 1959, upon issuance of Proc. No. 3269, eff. Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, set out preceding section 21 of Title 48, Territories and Insular Possessions, as required by sections 1 and 8(c) of the Alaska Statehood Law, Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out preceding section 21 of Title 48.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1018 of this title.

§ 904. General powers and duties of the Commission

(a) Rules, regulations, and orders

It shall be the duty of the Commission to administer the provisions of this chapter, and to that end the Commission shall have authority to make and amend such general or special rules and regulations and to issue such orders as may be necessary to carry out such provisions.

(b) Investigations and reports

The Commission shall have authority, for purposes of the administration of the provisions of this chapter, to inquire into and report on the management of the business of water carriers, and to inquire into and report on the management of the business of persons controlling, controlled by, or under a common control with water carriers, to the extent that the business of such persons is related to the management of the business of one or more such carriers, and the Commission shall keep itself informed as to the manner and method in which the same are conducted. The Commission may obtain from such carriers and persons such information as the Commission deems necessary to carry out the provisions of this chapter; and may transmit to Congress from time to time, such recommendations (including recommendations as to additional legislation) as the Commission may deem necessary.

(c) Establishment of classifications

The Commission may establish from time to time such just and reasonable classifications of groups of carriers included in the terms "common carrier by water", or "contract carrier by water", as the special nature of the services performed by such carriers shall require; and such just and reasonable rules, regulations, and requirements consistent with the provisions of this chapter to be observed by the carriers so classified or grouped, as the Commission, after hearing, finds necessary or desirable in the public interest.

(d) Exemptions

Whenever it shall appear from complaint made to the Commission or otherwise that the rates, fares, regulations or practices of persons engaged in transportation by water to or from a port or ports of any foreign country in competition with common carriers by water or contract carriers by water, cause undue disadvantage to such carriers by reason of such competition, the Commission may relieve such carriers from the provisions of this chapter to such extent, and for such time, and in such manner as in its judgment may be necessary to avoid or lessen such undue disadvantage, consistently with the public interest and the national transportation policy declared in this Act.

(e) Enforcement

Upon complaint in writing to the Commission by any person, or upon its own initiative without complaint, the Commission may investigate whether any water carrier has failed to comply with any provision of this chapter or with any requirement established pursuant thereto, and if, after notice of and hearing upon any such investigation, the Commission finds that any such carrier has failed to comply with any such provision or requirement, it shall issue an ap-

propriate order to compel such carrier to comply therewith. Whenever the Commission is of opinion that any complaint does not state reasonable grounds for action on its part, it may dismiss such complaint.

(Feb. 4, 1887, ch. 104, pt. III, § 304, as added Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 933.)

REFERENCES IN TEXT

The national transportation policy, referred to in subsec. (d), is set out as a note preceding section 901 of this title.

This Act, referred to in subsec. (d), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 901 et seq.) and chapters 1, 8, 13, and 19 (§§ 1 et seq., 301 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

CROSS REFERENCES

Control defined, see section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 912a of this title.

§ 905. Duties of common carriers by water

(a) Rates, fares, charges, and practices

It shall be the duty of every common carrier by water, with respect to transportation subject to this chapter which it undertakes or holds itself out to perform, or which it is required by or under authority of this chapter to perform, to provide and furnish such transportation upon reasonable request therefor, and to establish, observe, and enforce just and reasonable rates, fares, charges, and classifications, and just and reasonable regulations and practices, relating thereto and to the issuance, form, and substance of tickets, receipts, bills of lading, and manifests, the manner and method of presenting, marking, packing, and delivering property for transportation, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with such transportation in interstate or foreign commerce. All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

(b) Through routes

It shall be the duty of common carriers by water to establish reasonable through routes with other such carriers and with common carriers by railroad, for the transportation of persons or property, and just and reasonable rates, fares, charges, and classifications applicable thereto, and to provide reasonable facilities for operating such through routes, and to make reasonable rules and regulations with respect to their operation and providing for reasonable compensation to those entitled thereto. Common carriers by water may establish reasonable through routes and rates, fares, charges, and classifications applicable thereto with common carriers by motor vehicle. Common carriers by water subject to this chapter may also establish reasonable through routes and joint rates, charges, and classifications with common carriers by water subject to the Shipping Act, 1916, as amended [46 U.S.C. 801 et seq.], or the Intercoastal Shipping Act, 1933, as amended [46 U.S.C. 843 et seq.] (including persons who hold themselves out to transport goods but who do not own or operate vessels) engaged in the transportation of property in interstate or foreign commerce between Alaska or Hawaii on the one hand, and, on the other, the other States of the Union, and such through routes and joint rates, and all classifications, regulations, and practices established in connection therewith shall be subject to the provisions of this chapter. In the case of joint rates, fares, or charges it shall be the duty of the carriers parties thereto to establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such carriers.

(c) Preferences or advantages

It shall be unlawful for any common carrier by water to make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, port district, gateway, transit point, locality, region, district, territory, or description of traffic in any respect whatsoever; or to subject any particular person, port, port district, gateway, transit point, locality, region, district, territory, or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided*, That this subsection shall not be construed to apply to discriminations, prejudice, or disadvantage to the traffic of any other carrier of whatever description. Differences in the classifications, rates, fares, charges, rules, regulations, and practices of a water carrier in respect of water transportation from those in effect by a rail carrier with respect to rail transportation shall not be deemed to constitute unjust discrimination, prejudice, or disadvantage, or an unfair or destructive competitive practice, within the meaning of any provision of this Act.

(d) Reasonable, proper, and equal facilities

All common carriers by water shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this subsection the term "connecting line" means the connecting line of any common carrier by water or any common carrier subject to chapter 1 of this title.

(Feb. 4, 1887, ch. 104, pt. III, § 305, as added Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 934, and amended Aug. 24, 1962, Pub. L. 87-595, § 2, 76 Stat. 398.)

REFERENCES IN TEXT

The Shipping Act, 1916, as amended, referred to in subsec. (b) is act Sept. 7, 1916, ch. 451, 39 Stat. 728, as amended, which is classified principally to chapter 23 (§ 801 et seq.) of Title 46, Shipping. For complete classification of this Act to the Code, see section 842 of Title 46 and Tables volume.

The Intercoastal Shipping Act, 1933, referred to in subsec. (b), is act Mar. 3, 1933, ch. 199, 47 Stat. 1425, as amended, which is classified generally to chapter 23A (§ 843 et seq.) of Title 46, Shipping. For complete classification of this Act to the Code, see section 848 of Title 46 and Tables volume.

This Act, referred to in subsec. (c), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 901 et seq.) and chapters 1, 8, 13, and 19 (§§ 1 et seq., 301 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

AMENDMENTS

1962—Subsec. (b). Pub. L. 87-595 authorized common carriers by water to establish reasonable through routes and joint rates, charges, and classifications with common carriers by water subject to the Shipping Act, 1916, as amended, or the Intercoastal Shipping Act, 1933, as amended, including persons who do not own or operate vessels, engaged in transporting property between Alaska or Hawaii and the other States of the Union, which routes, rates, charges and classifications shall be subject to this chapter.

ADMISSION OF ALASKA AS STATE

Alaska was admitted into the Union on Jan. 3, 1959, upon issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, set out preceding section 21 of Title 48, Territories and Insular Possessions, as required by sections 1 and 8(c) of the Alaska Statehood Law, Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out preceding section 21 of Title 48.

ADMISSION OF HAWAII AS STATE

Hawaii was admitted into the Union on Aug. 21, 1959, upon issuance of Proc. No. 3309, Aug. 21, 1959, 24 F.R. 6868, 73 Stat. c74, as required by sections 1 and 7(c) of Pub. L. 86-3, Mar. 18, 1959, 73 Stat. 4, set out preceding section 491 of Title 48, Territories and Insular Possessions.

CROSS REFERENCES

Free transportation of Government personnel in American vessels prohibited; exceptions; reduction of Government rate; penalty, see section 817b of Title 46, Shipping.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 912a of this title.

§ 906. Tariffs and schedules

(a) Filing, printing, and maintenance of tariffs

Every common carrier by water shall file with the Commission, and print, and keep open to public inspection tariffs showing all rates, fares, charges, classifications, rules, regulations, and practices for the transportation in interstate or foreign commerce of passengers and property between places on its own route, and between such places and places on the route of any other such carrier or on the route of any common carrier by railroad or by motor vehicle, when a through route and joint rate shall have been established. Such tariffs shall plainly state the places between which property or passengers will be carried, the classification of property or passengers and, separately, all terminal charges, or other charges which the Commission shall require to be so stated, all privileges or facilities granted or allowed, and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such rates, fares, or charges, or the value of the service rendered to the passenger, shipper, or consignee.

(b) Statement of charges

All charges of common carriers by water shall be stated in lawful money of the United States. The Commission shall by regulations prescribe the form and manner in which the tariffs required by this section shall be published, filed, and posted; and the Commission is authorized to reject any tariff filed with it which is not in accordance with this section and with such regulations. Any tariff so rejected by the Commission shall be void and its use shall be unlawful.

(c) Amount chargeable

No common carrier by water shall charge or demand or collect or receive a greater or less or different compensation for transportation subject to this chapter or for any service in connection therewith than the rates, fares, or charges specified for such transportation or such service in the tariffs lawfully in effect; and no such carrier shall refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified, or extend to any person any privileges or facilities for transportation affecting the value thereof except such as are specified in its tariff: *Provided*, That the provisions of sections 1(7) and 22 of this title (which relate to transportation free and at reduced rates), together with such other provisions of chapter 1 of this title (including penalties) as may be necessary for the enforcement of such provisions, shall apply to common carriers by water.

(d) Filing as precondition to transportation

No common carrier by water, unless otherwise provided by this chapter, shall engage in transportation subject to this chapter unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this chapter. No change shall be made in any rate, fare, charge, classification, regulation, or practice specified in any effective tariff of a common carrier by water except after thirty days' notice of the proposed change filed and posted in accordance with this section. Such notice shall plainly state the change proposed to be made and the time when such change will take effect. The Commission may, in its discretion and for good cause shown, allow changes upon notice less than that herein specified, or modify the requirements of this section, either in particular instances or by general order applicable to special circumstances or conditions.

(e) Reasonable minimum rates and charges; practices

It shall be the duty of every contract carrier by water to establish and observe reasonable minimum rates and charges for any service rendered or to be rendered in the transportation of passengers or property or in connection there-

with and to establish and observe reasonable regulations, and practices to be applied in connection with said reasonable minimum rates and charges. It shall be the duty of every contract carrier by water to file with the Commission, post, and keep open for public inspection, in accordance with such rules and regulations as the Commission shall prescribe, schedules of minimum rates or charges actually maintained and charged for interstate and foreign transportation to which it is a party, and any rule, regulation, or practice affecting such charges and the value of the service thereunder. No contract carrier by water, unless otherwise provided by this chapter, shall engage in transportation subject to this chapter unless the minimum rates or charges actually maintained and charged have been published, filed, and posted in accordance with the provisions of this chapter. No new rate or charge shall be established and no reduction shall be made in any rate or charge, either directly or by means of any change in any rule, regulation, or practice affecting such rate or charge, or the value of service thereunder, except after thirty days' notice of the proposed new rate or charge, or of the proposed change, filed in accordance with this section. The Commission may, in its discretion and for good cause shown, allow the establishment of any such new rate or charge, or any such change, upon notice less than herein specified, or modify the requirement of this section with respect to posting and filing of such schedules, either in particular instances or by general order applicable to special or peculiar circumstances or conditions. Such notice shall plainly state the new rate or charge, or the change proposed to be made, and the time when it will take effect. It shall be unlawful for any such carrier to transport passengers or property or to furnish facilities or services in connection therewith for a less compensation, either directly or by means of a change in the terms and conditions of any contract, charter, agreement, or undertaking, than the rates or charges so filed with the Commission: *Provided*, That the Commission, in its discretion and for good cause shown, either upon application of any such carrier or carriers, or any class or group thereof, or upon its own initiative may, after hearing, grant relief from the provisions of this subsection to such extent, and for such time, and in such manner as, in its judgment, is consistent with the public interest and the national transportation policy declared in this Act.

(Feb. 4, 1887, ch. 104, pt. III, § 306, as added Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 935.)

REFERENCES IN TEXT

The national transportation policy, referred to in subsec. (e), is set out as a note preceding section 901 of this title.

This Act, referred to in subsec. (e), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 901 et seq.) and chapters 1, 8, 13, and 19 (§§ 1 et seq., 301 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

CROSS REFERENCES

Free transportation of Government personnel in American vessels prohibited; exceptions; reduction of Government rate; penalty, see section 817b of Title 46, Shipping.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 913 of this title.

§ 907. Commission authority over rates

(a) Complaints

Any person may make complaint in writing to the Commission that any individual or joint rate, fare, charge, classification, regulation, or practice of any common carrier by water or any contract carrier by water is or will be in violation of this chapter. Every complaint shall state fully the facts complained of and the reasons for such complaint and shall be made under oath.

(b) Prescription of lawful rates, fares, or charges

Whenever, after hearing, upon complaint or in an investigation on its own initiative, the Commission shall be of opinion that any individual or joint rate, fare, or charge demanded, charged, or collected by any common carrier or carriers by water for transportation subject to this chapter, or any regulation, practice, or classification of such carrier or carriers relating to such transportation, is or will be unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any provision of this chapter, it may determine and prescribe the lawful rate, fare, or charge or the maximum or minimum, or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful regulation, practice, or classification thereafter to be made effective.

(c) Evidence

In any proceeding to determine the justness or reasonableness of any rate, fare, or charge of any common carrier by water there shall not be taken into consideration or allowed as evidence or elements of value of the property of such carrier either goodwill, earning power, or the certificate under which such carrier is operating; and in applying for and receiving a certificate under this chapter any such carrier shall be deemed to have agreed to the provisions of this subsection on its own behalf and on behalf of all transferees of such certificate.

(d) Establishment of through routes, joint classifications, or joint rates

The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without a complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by common carriers by water, or by such carriers and carriers by railroad, or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. In the case of a through route, where one of the carriers is a common carrier by water, the Commission shall prescribe such reasonable differentials as it

may find to be justified between all-rail rates and the joint rates in connection with such common carrier by water. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and common carriers by water. If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancellation to show that it is consistent with the public interest, without regard to the provisions of paragraph (4) of section 15 of this title.

(e) Prescription of lawful divisions of joint rates, fares, or charges

Whenever, after hearing upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property by common carriers by water, or by such carriers and common carriers by railroad or by motor vehicle, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto, the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers. In cases where the joint rate, fare, or charge, was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation) would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare, or charge.

(f) Factors considered in prescription of rates

In the exercise of its power to prescribe just and reasonable rates, fares, and charges of common carriers by water, and classifications, regulations, and practices relating thereto, the Commission shall give due consideration, among other factors, to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient water transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable water carriers, under honest, economical, and efficient management, to provide such service.

(g) Investigations of new schedules

Whenever there shall be filed with the Commission any schedule (except a schedule referred to in section 922 of this title) stating a new rate, fare, charge, classification, regulation, or practice for the interstate or foreign transportation of passengers or property by a common carrier or carriers by water, the Commission may upon protest of interested parties or upon its own initiative at once, and, if it so orders, without answer or other formal pleading by such carrier or carriers, but upon reasonable notice, enter upon an investigation concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice, and pending such hearing and the decision thereon, the Commission, by filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto, as would be proper in a proceeding instituted after such rate, fare, charge, classification, regulation, or practice had become effective. If the proceeding shall not have been concluded and an order made within the period of suspension, the proposed rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period: *Provided, however,* That this subsection shall not apply to any initial schedule filed prior to October 1, 1941, by any such carrier (other than a carrier subject, at the time this chapter takes effect, to the provisions of the Intercoastal Shipping Act, 1933, as amended [46 U.S.C. 843 et seq.], or the Shipping Act, 1916, as amended [46 U.S.C. 801 et seq.]) insofar as such schedule names rates on traffic, or for services connected therewith, as to which such carrier was in bona fide operation on January 1, 1940. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable.

(h) Prescription of lawful minimum rates or charges

Whenever, after hearing, upon complaint or its own initiative, the Commission finds that any minimum rate or charge of any contract carrier by water, or any rule, regulation, or practice of any such carrier affecting such minimum rate or charge, or the value of the service thereunder, contravenes the national transportation policy declared this Act, or is in

contravention of any provision of this chapter, the Commission may prescribe such just and reasonable minimum rate or charge, or such rule, regulation, or practice as in its judgment may be necessary or desirable in the public interest and to promote such policy and will not be in contravention of any provision of this chapter. Such minimum rate or charge, or such rule, regulation, or practice, so prescribed by the Commission, shall give no advantage or preference to any such carrier in competition with any common carrier by water subject to this chapter, which the Commission may find to be undue or inconsistent with the public interest and the national transportation policy declared in this Act, and the Commission shall give due consideration to the cost of the services rendered by such carriers, and to the effect of such minimum rate or charge, or such rule, regulation, or practice, upon the movement of traffic by such carriers. All complaints shall state fully the facts complained of and the reasons for such complaint and shall be made under oath.

(i) Hearings regarding lawful charges and practices

Whenever there shall be filed with the Commission by any such contract carrier any schedule (except a schedule referred to in section 922 of this title) stating a charge for a new service or a reduced charge, directly or by means of any rule, regulation, or practice, for transportation in interstate or foreign commerce, the Commission may upon complaint of interested parties or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested party, but upon reasonable notice, enter upon a hearing concerning the lawfulness of such charge, or such rule, regulation, or practice, and pending such hearing and the decision thereon the Commission, by filing with such schedule and delivering to the carrier affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such charge, or such rule, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after hearing, whether completed before or after the charge, or rule, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding instituted after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change in any charge or rule, regulation, or practice shall go into effect at the end of such period: *Provided*, That this subsection shall not apply to any initial schedule filed prior to October 1, 1941, by any such carrier (other than a carrier subject, at the time this chapter takes effect, to the provisions of the Intercoastal Shipping Act, 1933, as amended [46 U.S.C. 843 et seq.], or the Shipping Act, 1916, as amended [46 U.S.C. 801 et seq.]) insofar as such schedule names charges on traffic, or for services connected therewith, as to which such carrier was in bona fide operation on January 1, 1940. The rule as to burden of proof specified in subsection (g) of this section shall apply to this subsection.

(Feb. 4, 1887, ch. 104, pt. III, § 307, as added Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 937.)

REFERENCES IN TEXT

The Intercoastal Shipping Act, 1933, referred to in subsecs. (g), (i), is act Mar. 3, 1933, ch. 199, 47 Stat. 1425, as amended, which is classified generally to chapter 23A (§ 843 et seq.) of Title 46, Shipping. For complete classification of this Act to the Code, see section 848 of Title 46 and Tables volume.

The Shipping Act, 1916, as amended, referred to in subsecs. (g), (i), is act Sept. 7, 1916, ch. 451, 39 Stat. 728, as amended, which is classified principally to chapter 23 (§ 801 et seq.) of Title 46, Shipping. For complete classification of this Act to the Code, see section 842 of Title 46 and Tables volume.

The national transportation policy, referred to in subsec. (h), is set out as a note preceding section 901 of this title.

This Act, referred to in subsec. (h), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 901 et seq.) and chapters 1, 8, 13, and 19 (§§ 1 et seq., 301 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

CROSS REFERENCES

Free transportation of Government personnel in American vessels prohibited; exceptions; reduction of Government rate; penalty, see section 817b of Title 46, Shipping.

§ 908. Reparation awards

(a) Carrier

For the purposes of this section the term "carrier" means a common carrier by water.

(b) Damages

In case any carrier shall do, cause to be done, or permit to be done any act, matter, or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this chapter required to be done, such carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

(c) Remedies

Any person or persons claiming to be damaged by any carrier may either make complaint to the Commission or may bring suit in his or their own behalf for the recovery of the damages for which such carrier may be liable under the provisions of subsection (b) of this section, in any district court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies.

(d) Orders directing payment

If, after hearing on a complaint, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this chapter for a violation thereof by any carrier, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

(e) Actions to enforce payment orders

If such carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file with the district court of the United States for the district in which he or it resides or in which is located the principal operating office of such carrier or in which is located any port of call on a route operated by such carrier, or in any State court of general jurisdiction having jurisdiction of the parties, a complaint setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises. Such suit in the district court of the United States shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the Commission shall be prima facie evidence of the facts therein stated, and except that the plaintiff shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the plaintiff shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit.

(f) Limitation of actions

(1)(A) All actions at law by carriers subject to this chapter for the recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.

(B) All complaints against carriers for the recovery of damages not based on overcharges shall be filed with the Commission within two years from the time the cause of action accrues, and not after, subject to subdivision (D) of this subsection.

(C) For the recovery of overcharges action at law shall be begun or complaint filed with the Commission against carriers subject to this part within three years from the time the cause of action accrues, and not after, subject to subdivision (D) of this subsection, except that if claim for the overcharge has been presented in writing to the carrier within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

(D) If on or before expiration of the two-year period of limitation in subdivision (B) of this subsection or the three-year period of limitation in subdivision (C) of this subsection a carrier subject to this chapter begins action under subdivision (A) of this subsection for recovery of charges in respect of the same transportation service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or such charges are collected by the carrier.

(2) The cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier and not after.

(3) A complaint for the enforcement of an order of the Commission for the payment of money shall be filed in the district court or the State court within one year from the date of the order, and not after.

(4) The term "overcharges" as used in this section means charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Commission.

(5) The provisions of this subsection shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this chapter: *Provided, however,* That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include three years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 66 of this title, whichever is later.

(g) Parties

In such suits all parties in whose favor the Commission may have made an award of damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant has his or its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.

(Feb. 4, 1887, ch. 104, pt. III, § 308, as added Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 940, and amended June 29, 1949, ch. 272, §§ 2, 3(a), 4, 63 Stat. 281; Aug. 26, 1958, Pub. L. 85-762, § 1(5), (6), 72 Stat. 860.)

AMENDMENTS

1958—Subsec. (f)(1). Pub. L. 85-762, § 1(5), substituted "Three years" for "two years" in pars. (A) and (C), and, the second time it appears, in par. (D).

Subsec. (f)(5). Pub. L. 85-762, § 1(6) added subsec. (f)(5).

1949—Subsec. (a). Act June 29, 1949, § 2, made the section applicable to all common carriers by water instead of applicable to a limited class only.

Subsec. (f)(1). Act June 29, 1949, § 3(a), added the same provisions regarding the period of limitations on actions by law by or against common carriers by water on overcharges or undercharges that govern common carriers by motor vehicle under section 304a of this title, and reduced the limitation period for commencement of actions from 3 to 2 years, subject to extensions in some cases.

Subsec. (f)(5). Act June 29, 1949, § 4, repealed subsec. (f)(5), relating to the effective date of subsec. (f) of this section.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-762 applicable only to cause of action which accrues on or after Aug. 26, 1958, see section 3 of Pub. L. 85-762 set out as an Ef-

fective Date of 1958 Amendment note under section 16 of this title.

EFFECTIVE DATE OF 1949 AMENDMENT

Section 3(b) of act June 29, 1949, provided that the amendment to subsec. (f) by act June 29, 1949, shall apply only to cases in which the cause of action will accrue after June 29, 1949.

§ 909. Certificates of public convenience and necessity

(a) Precondition to transportation; certain operational common carriers by water

Except as otherwise provided in this section and section 911 of this title, no common carrier by water shall engage in transportation subject to this chapter unless it holds a certificate of public convenience and necessity issued by the Commission: *Provided, however,* That subject to section 910 of this title, if any such carrier or a predecessor in interest was in bona fide operation as a common carrier by water on January 1, 1940, over the route or routes or between the ports with respect to which application is made and has so operated since that time (or, if engaged in furnishing seasonal service only, was in bona fide operation during the seasonal period, prior to or including such date, for operations of the character in question) except, in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in subsection (b) of this section and prior to the expiration of one hundred and twenty days after this section takes effect. Pending the determination of any such application, the continuance of such operation shall be lawful. If the application for such certificate is not made within one hundred and twenty days after this section takes effect, it shall be decided in accordance with the standards and procedure provided for in subsection (c) of this section, and such certificate shall be issued or denied accordingly. Any person, not included within the provisions of the foregoing proviso, who is engaged in transportation as a common carrier by water when this section takes effect may continue such operation for a period of one hundred and twenty days thereafter without a certificate, and, if application for such certificate is made to the Commission within such period, the continuance of such operation shall be lawful pending determination of such application: *Provided, further,* That, subject to the provisions of section 910 of this title, if any person (or his predecessor in interest) was in operation on August 26, 1958, over any inland waterway, other than the high seas, as a common carrier by water, in interstate or foreign commerce, between points in the Territory of Alaska, and has so operated in Alaska since that time (or if engaged in furnishing seasonal service only, was engaged in such operations in the year 1958 during the season ordinarily covered by its operations, and such operations have not been discontinued), except in either instance as to interruptions of service over which such person or his predecessor in interest had no control, a certificate shall be issued authorizing such operations without requiring further proof that public convenience and necessity will be served thereby, and without further proceedings, if application for such certificate is made as provided herein on or before December 31, 1960. Pending the determination of any such application, the continuance of such operations without a certificate shall be lawful. Applications for certificates under this proviso shall be filed with the Commission in writing, and in such form, contain such information and be accompanied by proof of service upon such interested parties as the Commission shall require.

(b) Applications

Application for a certificate shall be made in writing to the Commission, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission shall, by regulations, require.

(c) Issuance

Subject to section 910 of this title, upon application as provided in this section the Commission shall issue a certificate to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if the Commission finds that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied.

(d) Specifications; terms and conditions

Such certificate shall specify the route or routes over which, or the ports to and from which, such carrier is authorized to operate, and, at the time of issuance and from time to time thereafter, there shall be attached to the exercise of the privileges granted by such certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such other terms, and conditions, and limitations as are necessary to carry out, with respect to the operations of the carrier, the requirements of this chapter or those established by the Commission pursuant thereto: *Provided, however,* That no terms, conditions, or limitations shall restrict the right of the carrier to add to its equipment, facilities, or service within the scope of such certificate, as the development of the business and the demands of the public shall require, or the right of the carrier to extend its services over uncompleted portions of waterway projects now or hereafter authorized by Congress, over the completed portions of which it already operates, as soon as such uncompleted portions are open for navigation.

(e) Rights conferred

No certificate issued under this chapter shall confer any proprietary or exclusive right or rights in the use of public waterways.

(f) Contract carrier permits

Except as otherwise provided in this section and section 911 of this title, no person shall engage in the business of a contract carrier by water unless he or it holds an effective permit, issued by the Commission authorizing such operation: *Provided,* That, subject to section 910 of this title, if any such carrier or a predecessor in interest was in bona fide operation as a contract carrier by water on January 1, 1940, over the route or routes or between the ports with respect to which application is made, and has so operated since that time (or, if engaged in furnishing seasonal service only, was in bona fide operation during the seasonal period, prior to or including such date, for operations of the character in question) except, in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such permit, without further proceedings, if application for such permit is made to the Commission as provided in subsection (g) of this section and prior to the expiration of one hundred and twenty days after this section takes effect. Pending the determination of any such application, the continuance of such operation shall be lawful. If the application for such permit is not made within one hundred and twenty days after this section takes effect, it shall be decided in accordance with the standards and procedure provided for in subsection (g) of this section, and such permit shall be issued or denied accordingly. Any person, not included within the provisions of the foregoing proviso, who is engaged in transportation as a contract carrier by water when this section takes effect may continue such operation for a period of one hundred and twenty days thereafter without a permit, and, if application for such permit is made to the Commission within such period, the continuance of such operations shall be lawful pending the determination of such application: *Provided further,* That, subject to the provisions of section 910 of this title, if any person (or his predecessor in interest) was in operation on August 26, 1958, over any inland waterway, other than the high seas, as a contract carrier by water, in interstate or foreign commerce, between points in the Territory of Alaska, and has so operated in Alaska since that time (or if engaged in furnishing seasonal service only, was engaged in such operations in the year 1958 during the season ordinarily covered by its operations, and such operations have not been discontinued), except in either instance as to interruptions of service over which such person or his predecessor in interest had no control, a permit shall be issued authorizing such operations, without further proceedings, if application for such permit is made as provided herein before December 31, 1960. Pending the determination of such application, the continuance of such operations without a permit shall be lawful. Applications for permits under this proviso shall be filed with the Commission in writing, and in such form, contain such information, and be accompanied by proof of service upon such interested parties as the Commission shall require.

(g) Permit applications

Application for such permit shall be made to the Commission in writing, be verified under oath, and shall be in such form and contain such information and be accompanied by proof of service upon such interested parties as the Commission shall, by regulations, require. Subject to section 910 of this title, upon application the Commission shall issue such permit if it finds that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that such operation will be consistent with the public interest and the national transportation policy declared in this Act. The business of the carrier and the scope thereof shall be specified in such permit and there shall be attached thereto at time of issuance and from time to time thereafter such reasonable terms, conditions, and limitations, consistent with the character of the holder as a contract carrier by water, as are necessary to carry out the requirements of this chapter or those lawfully established by the Commission pursuant thereto: *Provided, however,* That no terms, conditions, or limitations shall restrict the right of the carrier to substitute or add contracts within the scope of the permit, or to add to his equipment, facilities, or service, within the scope of the permit, as the development of the business and the demands of the carrier's patrons shall require.

(Feb. 4, 1887, ch. 104, pt. III, § 309, as added Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 941, and amended July 12, 1960, Pub. L. 86-615, §§ 4, 5, 74 Stat. 384.)

REFERENCES IN TEXT

The national transportation policy, referred to in subsec. (g), is set out as a note preceding section 901 of this title.

This Act, referred to in subsec. (g), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 901 et seq.) and chapters 1, 8, 13, and 19 (§§ 1 et seq., 301 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

AMENDMENTS

1960—Subsec. (a). Pub. L. 86-615, § 4, added proviso relating to common carriers by water between points in the Territory of Alaska.

Subsec. (f). Pub. L. 86-615, § 5, added proviso relating to contract carriers by water between points in the Territory of Alaska.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, upon issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 920 of this title.

§ 910. Dual operations under certificates and permits

Unless, for good cause shown, the Commission shall find, or shall have found, that both a

certificate and a permit may be so held consistently with the public interest and with the national transportation policy declared in this Act—

(1) no person, or any person controlling, controlled by, or under common control with such person, shall hold a certificate as a common carrier by water if such person, or any such controlling person, controlled person, or person under common control, holds a permit as a contract carrier by water; and

(2) no person, or any person controlling, controlled by, or under common control with such person, shall hold a permit as a contract carrier by water if such person, or any such controlling person, controlled person, or person under common control, holds a certificate as a common carrier by water.

(Feb. 4, 1887, ch. 104, pt. III, § 310, as added Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 943.)

REFERENCES IN TEXT

The national transportation policy, referred to in text preceding par. (1), is set out as a note preceding section 901 of this title.

This Act, referred to in text preceding par. (1), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 901 et seq.) and chapters 1, 8, 13, and 19 (§§ 1 et seq., 301 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

CROSS REFERENCES

Control defined, see section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 909 of this title.

§ 911. Temporary operations

(a) To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a common carrier by water or a contract carrier by water, as the case may be. Such temporary authority shall be valid for such time as the Commission shall specify, but for not more than an aggregate of one hundred and eighty days, and shall create no presumption that corresponding permanent authority will be granted thereafter.

(b) Pending the determination of an application filed with the Commission under this Act for approval of a consolidation or merger of the properties of two or more water carriers, or of a purchase, lease, or contract to operate the properties of one or more water carriers, the Commission may, for good cause shown, and without hearings or other proceedings, grant temporary approval, for a period not exceeding one hundred and eighty days, of operation of the properties of such carriers by water by the person proposing to acquire them, as aforesaid.

(Feb. 4, 1887, ch. 104, pt. III, § 311, as added Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 943, and amended Mar. 27, 1942, ch. 199, title I, § 103, 56 Stat. 177.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 901 et seq.) and chapters 1, 8, 13, and 19 (§§ 1 et seq., 301 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

AMENDMENTS

1942—Subsec. (a). Act Mar. 27, 1942, struck out "but for not more than an aggregate of one hundred and eighty days" after "specify" in second sentence. This amendment expired on Mar. 31, 1947, by virtue of section 1501 of act Mar. 27, 1942, as amended, and the words were restored. For further details, see Expiration of 1942 Amendment note set out below.

EXPIRATION OF 1942 AMENDMENT

Act Mar. 27, 1942, which amended subsec. (a) by striking out the words "but for not more than an aggregate of one hundred and eighty days" following "specify" in the second sentence expired on Mar. 31, 1947, by virtue of section 1501 of act Mar. 27, 1942, as amended (60 Stat. 345; 50 U.S.C., App. 645).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 909 of this title.

§ 912. Transfer of certificates and permits

Except as provided in this chapter, any such certificate or permit may be transferred in accordance with such regulations as the Commission shall prescribe for the protection of the public interest and to insure compliance with the provisions of this chapter.

(Feb. 4, 1887, ch. 104, pt. III, § 312, as added Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 944.)

§ 912a. Revocation of certificates and permits

(1) Certificates and permits shall be effective from the date specified therein, and shall remain in effect until suspended or revoked as provided in this section.

(2) Any certificate or permit issued under this chapter may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may, upon complaint, or on the Commission's own initiative, after reasonable notice and opportunity for hearing, be suspended, changed, or revoked, in whole or in part, for willful failure to comply with the provisions of section 905(a) of this title with respect to performing, providing, and furnishing transportation upon reasonable request therefor: *Provided however*, That no such certificate or permit shall be suspended, changed, or revoked under this paragraph (except upon application of the holder) unless the holder thereof, fails to comply, within a reasonable time, not less than thirty days, to be fixed by the Commission, with a lawful order of the Commission, made as provided in section 904(e) of this title, commanding obedience to the provisions of section 905(a) of this title with respect to performing, providing, and furnishing transportation upon reasonable request therefor.

(Feb. 4, 1887, ch. 104, pt. III, § 312a, as added Sept. 6, 1965, Pub. L. 89-170, § 8(a), 79 Stat. 652.)

§ 913. Accounts, records, and reports

(a) Required reports; form; contents

The Commission is authorized to require annual, periodical, or special reports from water carriers, lessors, and associations (as defined in this section), and to prescribe the manner and form in which such reports shall be made, and to require from such carriers, lessors, and associations specific and full, true, and correct answers to all questions upon which the Commission may deem information to be necessary. Such annual reports shall give an account of the affairs of the carrier, lessor, or association in such form and detail as may be prescribed by the Commission. Said annual reports shall contain all the required information for the period of twelve months ending on the thirty-first day of December in each year, unless the Commission shall specify a different date, and shall be made out under oath and filed with the Commission at its office in Washington within three months after the close of the year for which the report is made, unless additional time be granted in any case by the Commission. Such periodical or special reports as may be required by the Commission under this subsection shall also be under oath whenever the Commission so requires.

(b) Filing of contracts

The Commission may also require any such carrier to file with it a true copy of any contract, charter, or agreement between such carrier and any other carrier or person in relation to transportation facilities, service, or traffic affected by the provisions of this chapter. The Commission shall not, however, make public any contract, charter, or agreement between a contract carrier by water and a shipper, or any of the terms or conditions thereof, except as a part of the record in a formal proceeding where it considers such action consistent with the public interest: *Provided*, That if it appears from an examination of any such contract that it fails to conform to the published schedule of the contract carrier by water as required by section 906(e) of this title, the Commission may, in its discretion, make public such of the provisions of the contract as the Commission considers necessary to disclose such failure and the extent thereof.

(c) Uniform system of accounts

The Commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of this chapter, prescribe a uniform system of accounts applicable to any class of water carriers, and a period of time within which such class shall have such uniform system of accounts, and the manner in which such accounts shall be kept.

(d) Depreciation charges

The Commission shall, as soon as practicable, prescribe for water carriers the classes of property for which depreciation charges may properly be included under operating expenses, and the rate or rates of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. The Commission may, when it deems necessary, modify the classes and rates so prescribed. When the Commission shall have exercised its authority under the foregoing provisions of this subsection, water carriers shall not charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a rate of depreciation other than that prescribed therefor by the Commission, and no such carrier shall in any case include under operating expenses any depreciation charge in any form whatsoever other than as prescribed by the Commission.

(e) Forms of accounts, records, and memoranda

The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by water carriers and lessors, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of money, and it shall be unlawful for such carriers or lessors to keep any accounts, records, and memoranda contrary to any rules, regulations, or orders of the Commission with respect thereto.

(f) Inspection of records

The Commission or its duly authorized special agents, accountants, or examiners shall have authority to inspect and copy any and all accounts, books, records, memoranda, correspondence, and other documents, of such water carriers and lessors, and of associations (as defined in this section), and such accounts, books, records, memoranda, correspondence, and other documents of any person controlling, controlled by, or under common control with any such carrier as the Commission deems relevant to such person's relation to or transactions with such carrier. The Commission or its duly authorized special agents, accountants, or examiners shall at all times have access to all lands, buildings, or equipment of such carriers or lessors, and shall have authority under its order to inspect and examine any and all such lands, buildings, and equipment. All such carriers, lessors, and persons shall submit their accounts, books, records, memoranda, correspondence, and other documents for the inspection and for copying authorized by this subsection, and such carriers and lessors shall submit their lands, buildings, and equipment for inspection and examination, to any duly authorized special agent, accountant, or examiner of the Commission, upon demand and the display of proper credentials.

(g) Preservation of records

The Commission may issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, correspondence, or documents of water carriers or lessors as may, after a reasonable time, be destroyed, and prescribing the length of time the same shall be preserved.

(h) Definitions

As used in this section, the words "keep" and "kept" shall be construed to mean made, prepared, or compiled, as well as retained; the term

"lessor" means a lessor of any right to operate as a water carrier; the term "water carrier" or "lessor" includes a receiver or trustee of such water carrier or lessor; and the term "association" means an association or organization maintained solely by water carriers subject to this chapter which engages in activities relating to the fixing of rates, publication of classifications, or filing of schedules by such carriers.

(Feb. 4, 1887, ch. 104, pt. III, § 313, as added Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 944, and amended Aug. 2, 1949, ch. 379, §§ 16–18, 63 Stat. 488.)

AMENDMENTS

1949—Subsec. (a). Act Aug. 2, 1949, § 16, made subsec. (a) applicable to associations or organizations maintained by or in the interest of water carriers.

Subsec. (f). Act Aug. 2, 1949, § 17, made subsec. (f) applicable to associations as defined in subsec. (h) of this section.

Subsec. (h). Act Aug. 2, 1949, § 18, defined the term "association".

CROSS REFERENCES

Control defined, see section 1 of this title.

Noncarrier deemed carrier upon acquiring control, see section 5 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5, 916 of this title.

§ 914. Allowances to shippers for transportation services

If the owner of property transported under this chapter directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be published in tariffs or schedules filed in the manner provided in this chapter and shall be no more than is just and reasonable; and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order.

(Feb. 4, 1887, ch. 104, pt. III, § 314, as added Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 945.)

§ 915. Notices and orders

(a) Designated agent for service; service

It shall be the duty of every water carrier to file with the Commission a designation in writing of the name and post-office address of an agent upon whom or which service of notices or orders may be made under this chapter. Such designation may from time to time be changed by like writing similarly filed. Service of notices or orders in proceedings under this chapter may be made upon such carrier by personal service upon it or upon an agent so designated by it, or by mail addressed to it or to such agent at the address filed. In default of such designation, service of any notice or order may be made by posting in the office of the secretary of the Commission. Whenever notice or order is served by mail, as provided herein, the date of mailing shall be considered as the time of service. In proceedings before the Commission involving the lawfulness of rates, fares, charges, classifications, or practices, service of notice of the suspension of a tariff or schedule upon an attorney in fact of a carrier who has filed a said tariff or schedule in behalf of such carrier naming the rates, fares, charges, classifications, or practices involved in such proceedings shall be deemed to be due and sufficient service upon the carrier and service of notice of the suspension of a joint tariff or schedule upon a carrier which has filed said joint tariff to which another carrier is a party naming the rates, fares, charges, classifications, or practices involved in such proceedings shall be deemed to be due and sufficient service upon the several carriers parties thereto, but such manner of service shall not be considered as excluding service in any other manner authorized by law.

(b) Hearings and investigations

No order, based upon a finding that any water carrier has violated any provision of this chapter, shall be made by the Commission except after hearing upon complaint or after an investigation upon its own initiative.

(c) Suspension or modification of orders

The Commission may suspend, modify, or set aside its orders under this chapter upon such notice and in such manner as it shall deem proper.

(d) Effective date of orders; duration

Except as otherwise provided in this chapter, all orders of the Commission, other than orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, as the Commission may prescribe and shall continue in force until its further order, or for a specified period of time, according as shall be prescribed in the order, unless the same shall be suspended, modified, or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction.

(e) Compliance

It shall be the duty of every water carrier, its agents and employees, to observe and comply with such orders so long as the same shall remain in effect.

(Feb. 4, 1887, ch. 104, pt. III, § 315, as added Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 946, and amended Aug. 2, 1949, ch. 379, § 19, 63 Stat. 489.)

AMENDMENTS

1949—Subsec. (a). Act Aug. 2, 1949, struck out of the third sentence the word "registered" preceding "mail", and inserted provision relating to service of notice of suspension of a joint tariff.

§ 916. Enforcement and procedure

(a) Application of other sections

The provisions of sections 12, 17, and 46 of this title shall apply with full force and effect in the administration and enforcement of this chapter.

(b) Application to district court for enforcement

If any water carrier fails to comply with or operates in violation of any provision of this chapter (except provisions as to the reasonableness of rates, fares, or charges, and the discrim-

inatory character thereof), or any rule, regulation, requirement, or order thereunder (except an order for the payment of money), or of any term or condition of any certificate or permit, the Commission or the Attorney General of the United States (or, in case of such an order, any party injured by the failure to comply therewith or by the violation thereof) may apply to any district court of the United States having jurisdiction of the parties for the enforcement of such provision of this chapter or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ or writs of injunction or other process, mandatory or otherwise, restraining such carrier and any officer, agent, employee, or representative thereof from further violation of such provision of this chapter or of such rule, regulation, requirement, order, term, or condition and enjoining obedience thereto.

(c) Record of hearings; publication

The Commission shall enter of record a written report of hearings conducted upon complaint, or upon its own initiative without complaint, stating its conclusions, decisions, and order and, if reparation is awarded, the findings of fact upon which the award is made; and shall furnish a copy of such report to all parties of record. The Commission may provide for the publication of such reports in the form best adapted for public information and use, and such authorized publications shall, without further proof or authentication, be received as competent evidence of such reports in any court of competent jurisdiction.

(d) Schedules and tariffs as public records

Subject to the provisions of section 913 of this title, the copies of schedules, and classifications and tariffs of rates, fares, and charges, and of all contracts, agreements, and arrangements of water carriers filed with the Commission as herein provided, and the statistics, tables, and figures contained in the annual or other reports of carriers made to the Commission as required, under the provisions of this chapter shall be preserved as public records in the custody of the secretary of the Commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of and extracts from any of said schedules, classifications, tariffs, contracts, agreements, arrangements, or reports, made public records as aforesaid, certified by the secretary, under the Commission's seal, shall be received in evidence with like effect as the originals.

(Feb. 4, 1887, ch. 104, pt. III, § 316, as added Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 946, and amended Oct. 15, 1970, Pub. L. 91-452, title II, § 243(b), 84 Stat. 931.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-452 struck out references to sections 47 and 48 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISIONS

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

CROSS REFERENCES

Immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

§ 917. Unlawful acts and penalties

(a) Intentional violations of chapter

Any person who knowingly and willfully violates any provision of this chapter, or any rule, regulation, requirement, or order thereunder, or any term or condition of any certificate or permit, for which no penalty is otherwise provided, shall be deemed guilty of a misdemeanor and upon conviction thereof in any court of the United States of competent jurisdiction in the district in which such offense was in whole or in part committed shall be subject for each offense to a fine not exceeding $500. Each day of such violation shall constitute a separate offense.

(b) Rebates and concessions

Any water carrier or any officer, agent, employee, or representative thereof, who shall knowingly and willfully offer, grant, or give, or cause to be offered, granted, or given, any rebate, deferred rebate, or other concession, in violation of the provisions of this chapter, or who, by any device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person to obtain transportation subject to this chapter at less than the rates, fares, or charges lawfully in effect, shall be deemed guilty of a misdemeanor and upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was wholly or in part committed shall be subject for each offense to a fine of not more than $5,000.

(c) Solicitation of rebates and concessions

Any person who shall knowingly and willfully solicit, accept, or receive any rebate, deferred rebate, or other concession in violation of the provisions of this chapter, or who shall by any device or means, whether with or without the consent or connivance of any water carrier or his or its officer, agent, employee, or representative, knowingly and willfully obtain transportation subject to this chapter at less than the rates, fares, or charges lawfully in effect, or shall knowingly and willfully, directly or indirectly, by false claim, false billing, false representation, or other device or means, obtain or attempt to obtain any allowance, refund, or repayment in connection with or growing out of such transportation, whether with or without the consent or connivance of such carrier or his or its officer, agent, employee, or representative, whereby the compensation of such carrier for such transportation or service, either before or after payment, shall be less than the rates, fares, or charges lawfully in effect, shall be

deemed guilty of a misdemeanor and upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was in whole or in part committed, be subject for each offense to a fine of not more than $5,000.

(d) Refusal to comply with commission

Any water carrier or other person, or any officer, agent, employee, or representative thereof, who shall willfully fail or refuse to make a report to the Commission as required by this chapter, or to make specific and full, true, and correct answer to any question within thirty days from the time it is lawfully required by the Commission so to do, or to keep accounts, records, and memoranda in the form and manner prescribed by the Commission, or shall willfully falsify, destroy, mutilate, or alter any report, account, record, memorandum, book, correspondence, or other document, required under this chapter to be kept, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions as required under this chapter, or shall willfully keep any accounts, records, or memoranda contrary to the rules, regulations, or orders of the Commission with respect thereto, or shall knowingly and willfully file with the Commission any false report, account, record, or memorandum, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was in whole or in part committed, be subject for each offense to a fine of not more than $5,000. As used in this subsection, the word "keep" shall be construed to mean made, prepared, or compiled, as well as retained.

(e) Concealment of information by commission agents

Any special agent, accountant, or examiner of the Commission who knowingly and willfully divulges any fact or information which may come to his knowledge during the course of any examination or inspection made under authority of section 913 of this title, except as he may be directed by the Commission or by a court or judge thereof, shall be guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than $500 or imprisonment for a term not exceeding six months, or both.

(f) Release of information improperly by carrier or agents thereof

It shall be unlawful for any common carrier by water, or any officer, receiver, trustee, lessee, agent, or employee of such carrier, or for any other person authorized by such carrier or person to receive information, knowingly and willfully to disclose to or permit to be acquired by any person other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such carrier for transportation subject to this chapter, which information may be used to the detriment or prejudice of such shipper or consignee, or which may or does improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person to solicit or knowingly and willfully receive any such information which may be or is so used. Any person violating any provisions of this subsection shall be guilty of a misdemeanor and upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was in whole or in part committed shall be subject to a fine of not more than $2,000. Nothing in this chapter shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any court, or to any officer or agent of the Government of the United States or of any State, Territory, or District thereof, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crimes, or to another carrier, or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers.

(Feb. 4, 1887, ch. 104, pt. III, § 317, as added Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 947.)

CROSS REFERENCES

Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 918. Collection of rates and charges

No common carrier by water shall deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe to govern the settlement of all such rates and charges, including rules and regulations for periodical settlement, and to prevent unjust discrimination or undue preference or prejudice: *Provided*, That the provisions of this section shall not be construed to prohibit any such carrier from extending credit in connection with rates and charges on freight transported for the United States, for any department, bureau, or agency thereof, or for any State or Territory or political subdivision thereof, or for the District of Columbia. Where such carrier is instructed by a shipper or consignor to deliver property transported by such carrier to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect of the transportation of such property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee (1) is an agent only and had no beneficial title in the property, and (2) prior to delivery of the property has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of a shipment reconsigned or diverted to a point other than that specified in the original bill of lading, has notified the delivering carrier in writing of the name and address of the beneficial owner of the property. In such cases the shipper or consignor, or in the case of a shipment so reconsigned or diverted, the

beneficial owner shall be liable for such additional charges irrespective of any provisions to the contrary in the bill of lading or in the contract under which the shipment was made or handled. An action for the enforcement of such liability may be begun within two years from the time the cause of action accrues, or before the expiration of six months after final judgment against the carrier in an action against the consignee begun within said period. If the consignee has given to the carrier erroneous information as to who is the beneficial owner, such consignee shall himself be liable for such additional charges, notwithstanding the foregoing provisions of this section. An action for the enforcement of such liability may be begun within two years from the time the cause of action accrues, or before the expiration of six months after final judgment against the carrier in an action against the beneficial owner named by the consignee begun within said period. On shipments reconsigned or diverted by an agent who has furnished the carrier with a notice of agency and the proper name and address of the beneficial owner, and where such shipments are refused or abandoned at ultimate destination, the said beneficial owner shall be liable for all legally applicable charges in connection therewith.

(Feb. 4, 1887, ch. 104, pt. III, § 318, as added Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 949.)

§ 919. Employees

The Commission is authorized to employ such experts, assistants, special agents, examiners, attorneys, and other employees as in its judgment may be necessary or advisable for the convenience of the public and for the efficient administration of this chapter. Such examiners shall have power to administer oaths, examine witnesses, and receive evidence.

(Feb. 4, 1887, ch. 104, pt. III, § 319, as added Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 950.)

§ 920. Repeals

(a) Shipping provisions repealed

The Shipping Act, 1916, as amended [46 U.S.C. 801 et seq.], and the Intercoastal Shipping Act, 1933, as amended [46 U.S.C. 843 et seq.], are repealed insofar as they are inconsistent with any provision of this chapter and insofar as they provide for the regulation of, or the making of agreements relating to, transportation of persons or property by water in commerce which is within the jurisdiction of the Commission under the provisions of this chapter; and any other provisions of law are repealed insofar as they are inconsistent with any provision of this chapter.

(b) Shipping provisions not repealed

Nothing in subsection (a) of this section shall be construed to repeal—

(1) section 205 of the Merchant Marine Act, 1936, as amended [46 U.S.C. 1115], or any provision of law providing penalties for violations of said section;

(2) the third sentence of section 2 of the Intercoastal Shipping Act, 1933, as amended [46 U.S.C. 844], as extended by section 5 of such Act [46 U.S.C. 845b], or any provision of law providing penalties for violations of such section 2 [46 U.S.C. 844];

(3) the provisions of the Shipping Act, 1916, as amended [46 U.S.C. 801 et seq.], insofar as such Act provides for the regulation of persons included within the term "other person subject to this chapter", as defined in such Act;

(4) sections 27 and 28 of the Merchant Marine Act, 1920, as amended [46 U.S.C. 883, 884].

(c) Transportation not subject to this chapter

Nothing in subsection (a) of this section shall be construed to affect the provisions of section 15 of the Shipping Act, 1966 [46 U.S.C. 814], so as to prevent any water carrier subject to the provisions of this chapter from entering into any agreement under the provisions of such section 15 with respect to transportation not subject to the provisions of this chapter in which such carrier may be engaged.

(d) Navigation laws, admiralty jurisdiction, liabilities of vessels

Nothing in this chapter shall be construed to affect any law of navigation, the admiralty jurisdiction of the courts of the United States, liabilities of vessels and their owners for loss or damage, or laws respecting seamen, or any other maritime law, regulation, or custom not in conflict with the provisions of this chapter.

(e) Transportation and terminal facilities

Subsection (e) of section 153 of this title, is repealed as of October 1, 1940: *Provided, however,* That (1) any certificate of public convenience and necessity granted to any carrier pursuant to the provisions of said subsection shall continue in effect as though issued under the provisions of section 909 of this title; and (2) through routes and joint rates, and rules, regulations, and practices relating thereto, put into effect pursuant to the provisions of said subsection shall, after the repeal of said subsection, be held and considered to have been put into effect pursuant to the provisions of the Interstate Commerce Act, as amended.

(Feb. 4, 1887, ch. 104, pt. III, § 320, as added Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 950.)

References in Text

The Shipping Act, 1916, as amended, referred to in subsecs. (a), (b)(3), is act Sept. 7, 1916, ch. 451, 39 Stat. 728, as amended, which is classified principally to chapter 23 (§ 801 et seq.) of Title 46, Shipping. For complete classification of this Act to the Code, see section 842 of Title 46 and Tables volume.

The Intercoastal Shipping Act, 1933, referred to in subsec. (a), is act Mar. 3, 1933, ch. 199, 47 Stat. 1425, as amended, which is classified generally to chapter 23A (§ 843 et seq.) of Title 46, Shipping. For complete classification of this Act to the Code, see section 848 of Title 46 and Tables volume.

Section 153 of this title, referred to in subsec. (e), was repealed by Pub. L. 88-67, § 1(1), July 19, 1963, 77 Stat. 81.

The Interstate Commerce Act, referred to in subsec. (e), is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, which is classified generally to this chapter (§ 901 et seq.) and chapters 1, 8, 13, and 19 (§ 1 et seq., 301 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the

Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 921, 922 of this title.

§ 921. Transfers to commission

(a) Employees

Such officers and employees of the United States Maritime Commission as the President shall determine to have been employed in the administration of the provisions of law repealed by section 920 of this title, and whose retention by the United States Maritime Commission is not necessary, in the opinion of the President, for the performance of other duties, are transferred to the Interstate Commerce Commission upon such date or dates as the President shall specify by Executive order. Such transfer of such personnel shall be without reduction in classification or compensation, except that this requirement shall not operate after the end of the fiscal year during which such transfer is made to prevent the adjustment of classification or compensation to conform to the duties to which such transferred personnel may be assigned.

(b) Records and property

All files, reports, records, tariff schedules, property (including office furniture and equipment), contracts, agreements, documents, or papers kept or used by, made to, or filed with the United States Maritime Commission under or in the administration of any provision of law repealed by this chapter, are transferred to the jurisdiction and control of the Interstate Commerce Commission, and may be used for such purposes as the Interstate Commerce Commission may deem necessary in the administration of this chapter; except that in the case of files, reports, records, tariff schedules, contracts, agreements, documents, or papers, the retention of which is necessary for purposes of the administration by the United States Maritime Commission of matters within its jurisdiction, the furnishing to the Interstate Commerce Commission of copies thereof shall constitute sufficient compliance with the provisions of this subsection.

(c) Authorized appropriations

All appropriations and unexpended balances of appropriations available for expenditure by the United States Maritime Commission in the administration of any provision of law repealed by this chapter shall be available for expenditure by the Interstate Commerce Commission for any objects of expenditure authorized by this chapter, in the discretion of the Interstate Commerce Commission, without regard to the requirement of apportionment under section 665 of title 31.

(Feb. 4, 1887, ch. 104, pt. III, § 321, as added Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 951.)

TRANSFER OF FUNCTIONS

The United States Maritime Commission was abolished by Reorg. Plan No. 21 of 1950, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273, set out in the Appendix to Title 5, Government Organizations and Employees. Reorg. Plan No. 21 of 1950 transferred part of its functions and part of the functions of its Chairman to the Federal Maritime Board and the Chairman thereof, the Board having been created by that Plan as an agency within the Department of Commerce with an independent status in some respects, and transferred the remainder of the Commission's functions and the functions of its Chairman to the Secretary of Commerce, with power vested in the Secretary to authorize their performance by the Maritime Administrator, the head of the Maritime Administration, which likewise was established by the Plan in the Department of Commerce with the provision that the Chairman of the Federal Maritime Board should, ex officio, be the Administrator.

Reorg. Plan No. 7 of 1961, § 304, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, abolished the Federal Maritime Board, including the offices of the members of the Board. Functions of the Board were transferred either to the Federal Maritime Commission or to the Secretary of Commerce by section 103 and 202 of Reorg. Plan No. 7 of 1961.

All executive and administrative functions of the United States Maritime Commission were transferred to the Chairman thereof by Reorg. Plan No. 6 of 1949, eff. Aug. 20, 1949, 14 F.R. 5228, 63 Stat. 1069, set out in the Appendix to Title 5.

§ 922. Pending matters

(a) Orders, rules, regulations, etc.

Notwithstanding the provisions of section 920 of this title, or any other provision of this chapter, all orders, rules, regulations, permits, tariffs (including rates, fares, charges, classifications, rules, and regulations relating thereto), contracts, or agreements, to the extent that they were issued, authorized, approved, entered into, or filed under any provision of law repealed by this chapter, and are still in effect, shall continue in force and effect according to the terms thereof as though this chapter had not been enacted, except that the Commission may modify, set aside, or rescind any such order, rule, regulation, permit, tariff, contract, or agreement to the extent that it finds the same to be in violation of any provision of this chapter or inconsistent with the national transportation policy declared in this Act.

(b) Proceedings or investigations

Any proceeding, hearing, or investigation commenced or pending before the United States Maritime Commission at the time this section takes effect, to the extent that it relates to the administration of any provision of law repealed by this chapter, shall be continued or otherwise acted upon by the Commission as though such proceeding, hearing, or investigation had been instituted under the provisions of this chapter.

(c) Judicial proceedings

Any pending judicial proceeding arising under any provision of law repealed by the provisions of this chapter shall be continued, heard, and determined in the same manner and with the same effect as if this chapter had not been enacted; except that in the case of any such proceeding to which the United States Maritime Commission is a party, the court, upon motion or supplemental petition, may direct that the Commission be substituted for the United States Maritime Commission as a party to the proceeding or made an additional party thereto.

(Feb. 4, 1887, ch. 104, pt. III, § 322, as added Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 951.)

REFERENCES IN TEXT

The national transportation policy, referred to in subsec. (a), is set out as a note preceding section 901 of this title.

This Act, referred to in subsec. (a), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 901 et seq.) and chapters 1, 8, 13, and 19 (§§ 1 et seq., 301 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

TRANSFER OF FUNCTIONS

The United States Maritime Commission was abolished by Reorg. Plan No. 21 of 1950, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273, set out in the Appendix to Title 5, Government Organization and Employees. Reorg. Plan No. 21 of 1950 transferred part of its functions and part of the functions of its Chairman to the Federal Maritime Board and the Chairman thereof, the Board having been created by that Plan as an agency within the Department of Commerce with an independent status in some respects, and transferred the remainder of the Commission's functions and the functions of its Chairman to the Secretary of Commerce, with power vested in the Secretary to authorize their performance by the Maritime Administrator, the head of the Maritime Administration, which likewise was established by the Plan in the Department of Commerce with the provision that the Chairman of the Federal Maritime Board should, ex officio, be the Administrator.

Reorg. Plan No. 7 of 1961, § 304, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, abolished the Federal Maritime Board, including the offices of the members of the Board. Functions of the Board were transferred either to the Federal Maritime Commission or to the Secretary of Commerce by section 103 and 202 of Reorg. Plan No. 7 of 1961.

All executive and administrative functions of the United States Maritime Commission were transferred to the Chairman thereof by Reorg. Plan No. 6 of 1949, eff. Aug. 20, 1949, 14 F.R. 5228, 63 Stat. 1069, set out in the Appendix to Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 907 of this title.

§ 922a. Recording of evidences of equipment indebtedness

Any mortgage (except mortgages under the Ship Mortgage Act, 1920, as amended [46 U.S.C. 911 et seq.]), lease, equipment trust agreement, conditional sale agreement, or other instrument evidencing the mortgage, lease, conditional sale, or bailment of one or more vessels, used or intended for use by a carrier subject to this chapter in interstate commerce or any assignment of rights or interest under any such instrument, or any supplement or amendment to any such instrument or assignment (including any release, discharge, or satisfaction thereof, in whole or in part), may be filed with the Commission, provided such instrument, assignment, supplement, or amendment is in writing, executed by the parties thereto, and acknowledged or verified in accordance with such requirements as the Commission shall prescribe; and any such instrument or other document, when so filed with the Commission, shall constitute notice to and shall be valid and enforceable against all persons including, without limitation, any purchaser from, or mortgagee, creditor, receiver, or trustee in bankruptcy of, the mortgagor, buyer, lessee, or bailee, of the vessel covered thereby, from and after the time such instrument or other document is so filed with the Commission; and such instrument or other document need not be otherwise filed, deposited, registered, or recorded under the provisions of any other law of the United States of America, or of any State (or political subdivision thereof), territory, district, or possession thereof, respecting the filing, deposit, registration, or recordation of such instruments or documents: *Provided, however,* That nothing contained in this section shall, in any way, be construed to alter or amend the Ship Mortgage Act, 1920, as amended. The Commission shall establish and maintain a system for the recordation of each such instrument or document, filed pursuant to the provisions of this section, and shall cause to be marked or stamped thereon, a consecutive number, as well as the date and hour of such recordation, and shall maintain, open to public inspection, an index of all such instruments or documents, including any assignment, amendment, release, discharge, or satisfaction thereof, and shall record, in such index the names and addresses of the principal debtors, trustees, guarantors and other parties thereto, as well as such other facts as may be necessary to facilitate the determination of the rights of the parties to such transactions.

(Feb. 4, 1887, ch. 104, pt. III, § 323, as added Oct. 17, 1968, Pub. L. 90-586, § 1(2), 82 Stat. 1149.)

REFERENCES IN TEXT

The Ship Mortgage Act, 1920, referred to in text, is act June 5, 1920, ch. 250, § 30, 41 Stat. 1000, as amended, which is classified generally to chapter 25 (§ 911 et seq.) of Title 46, Shipping. For complete classification of this Act to the Code, see section 984 of Title 46 and Tables volume.

§ 922b. Filing of information return or other report for income tax purposes with State or subdivision by water carrier on compensation paid to interstate employees

(a) Filing or reporting where employee resides and where employee earns more than 50 per centum of compensation paid by carrier to him; applicability to masters, officers, and seamen

No water carrier subject to the provisions of this chapter nor any water carrier or class of water carriers operating on inland or coastal waters under an exemption provided therein shall file any information return or other report for income tax purposes with respect to the compensation paid to any employee who performs his regularly assigned duties as an employee of such carrier in more than one State with any State or subdivision thereof other than the State or subdivision of such employee's residence, as shown on the employment records of such carrier, and the State or subdivision in which such employee earned more than 50 per centum of the compensation paid him by such carrier during the preceding calendar year. The provisions of this section shall also apply with respect to the compensa-

tion paid to any master, officer, or seaman who is a member of the crew on a vessel engaged in foreign, coastwise, intercoastal or noncontiguous trade or in the fisheries of the United States.

(b) State or subdivision where employee deemed to have earned more than 50 per centum of compensation

For the purposes of subsection (a) of this section, an employee shall be deemed to have earned more than 50 per centum of his compensation in any State or subdivision in which the time worked by him in such State or subdivision is more than 50 per centum of the total time worked by him in the calendar year while so employed.

(c) Definitions

For the purpose of this section the term "compensation" shall mean all moneys received for services rendered by an employee, as defined in subsection (a) of this section in the performance of his duties and shall include wages and salary.

(Feb. 4, 1887, ch. 104, pt. III, § 324, as added Dec. 23, 1970, Pub. L. 91-569, § 3(a), 84 Stat. 1501.)

EFFECTIVE DATE

Section effective Jan. 1, 1971, see section 5 of Pub. L. 91-569, set out as an Effective Date note under section 26a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 6362.

§ 923. Separability of provisions

If any provision of this chapter or the application thereof to any person, or commerce, or circumstance is held invalid, the remainder of the chapter and the application of such provision to other persons, or commerce, or circumstances shall not be affected thereby.

(Feb. 4, 1887, ch. 104, pt. III, § 325, formerly § 323, as added Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 952, renumbered § 324, Oct. 17, 1968, Pub. L. 90-586, § 1(1), 82 Stat. 1149, renumbered § 325, Dec. 23, 1970, Pub. L. 91-569, § 3(a), 84 Stat. 1501.)

CHAPTER 13—INTERSTATE COMMERCE ACT, PART IV; FREIGHT FORWARDERS

Sec.
1001. Short title.
1002. Definitions and exemptions.
1003. General powers and duties of Commission.
(a) Rules, regulations, and orders.
(b) Service requirements.
(c) Property loss or damage.
(d) Personal injury.
(e) Inquiries into the management of business of freight forwarders.
(f) Investigations.
1004. Rates, charges, and practices.
1005. Tariffs of freight forwarders.
(a) Publication.
(b) Statement of charges.
(c) Uniform charges; remissions.
(d) Notice of proposed changes.
(e) Preconditions to engaging in service.
1006. Commission authority over rates and practices.
(a) Complaint.
(b) Prescription of lawful rates.
(c) Evidence.
(d) Factors considered in determining reasonable rates.
(e) Investigation of tariffs.
(f) Notice to States; joint hearings.
1006a. Actions for recovery of charges; limitation of actions; definition; effective date; actions by or against United States.
1007. Motor carrier rates applicable to small parcel forwarding.
1008. Authority for assembling and distribution rates.
1009. Utilization by freight forwarders of services of common carriers by motor vehicle.
1010. Permits.
(a) Precondition to service; exceptions; certain persons engaged in service.
(b) Application.
(c) Issuance.
(d) Corporations controlled by certain common carriers.
(e) Specifications; terms and conditions.
(f) Effective date; duration.
(g) Transfers.
(h) Direct railroad, water, or motor-carrier operations.
(i) Abandonment of service.
1011. Relationships between freight forwarders and other persons.
(a) Control of carrier.
(b) Manufacturers and others engaged in service.
(c) Ownership of stock of freight forwarder by agents or others associated with common carriers.
(d) Authority of commission to investigate.
(e) Jurisdiction.
(f) Supplemental orders.
(g) Control of freight forwarders.
1012. Accounts, records, and reports.
(a) Required reports.
(b) Contents.
(c) Form.
(d) Inspections of land, buildings, and equipment.
(e) Preservation of records.
(f) Definitions.
1013. Bills of lading and delivery of property.
1014. Collection of rates and charges.
1015. Allowances to shippers for transportation service.
1016. Notices and orders.
(a) Designated agent for service; service.
(b) Suspension or modification of orders.
(c) Effective date of orders; duration.
(d) Compliance.
1017. Enforcement and procedure.
(a) Application of other provisions.
(b) Application to district court; writs; notice.
(c) Record.
(d) Preservation of classifications and tariffs.
1018. Carriers the services of which freight forwarders may utilize.
1019. Liability for past acts and omissions.
1020. Special powers during time of war or other emergency.
1021. Unlawful acts and penalties.
(a) Intentional violations of chapter.
(b) Rebates and concessions.
(c) Solicitation of rebates or concessions.
(d) Refusal to comply with commission.
(e) Concealment of information by commission agents.
(f) Release of information improperly.
(g) Application of other provisions.
1022. Separability of provisions.

INTERSTATE COMMERCE ACT

The Interstate Commerce Act of Feb. 4, 1887, ch. 104, 24 Stat. 379, as it existed prior to its division into parts, is embodied in chapter 1 (§ 1 et seq.) of this title. The original act was designated "Part I" and a new Part II, comprising chapter 8 (§ 301 et seq.) of this title, was added by act Aug. 9, 1935, ch. 498, 49 Stat. 543. Part III, constituting chapter 12 (§ 901 et seq.) of this title, was added by act Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 929. Part IV, constituting this chapter, was added by act May 16, 1942, ch. 318, § 1, 56 Stat. 284. Part V, constituting chapter 19 (§ 1231 et seq.) of this title, was added by Pub. L. 85-625, § 2, Aug. 12, 1958, 72 Stat. 568.

NATIONAL TRANSPORTATION POLICY

Act Sept. 18, 1940, ch. 722, title I, § 1, 54 Stat. 899, amended the Interstate Commerce Act, chapters 1, 8, 12, 13, and 19 (§§ 1 et seq., 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title, by inserting before Part I thereof (chapter 1 of this title) the following provision entitled "National Transportation Policy": "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act [chapters 1, 8, 12, 13, and 19 of this title], so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act [chapters 1, 8, 12, 13, and 19 of this title] shall be administered and enforced with a view to carrying out the above declaration of policy."

CROSS REFERENCES

Appeals to Supreme Court, see section 45 of this title.

Exchange of telephone, telegraph, or cable services, see section 1 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 5b, 302 of this title.

§ 1001. Short title

This chapter may be cited as part IV of the Interstate Commerce Act.

(Feb. 4, 1887, ch. 104, pt. IV, § 401, as added May 16, 1942, ch. 318, § 1, 56 Stat. 284.)

EFFECTIVE DATE

Section 6 of act May 16, 1942, provided that: "Part IV of the Interstate Commerce Act [this chapter] shall take effect on the date of enactment of this Act [May 16, 1942] except that section 405 [section 1005 of this title] shall take effect sixty days after the date of enactment of this Act, and sections 404, 406, 413, 414, and 417 [sections 1004, 1006, 1013, 1014, and 1017, respectively of this title], shall take effect ninety days after the date of enactment of this Act [May 16, 1942]: *Provided, however,* That the Interstate Commerce Commission shall, if found by it to be necessary or advisable in the public interest, by general or special order, postpone the taking effect of any of the provisions of this part [this chapter] to such time, but not beyond the 1st day of September 1942, as the Commission shall prescribe."

SHORT TITLE OF INTERSTATE COMMERCE ACT

For Short Title of Interstate Commerce Act, see section 1 of act Sept. 18, 1940, set out as a Short Title note preceding section 1 of this title.

§ 1002. Definitions and exemptions

(a) For the purposes of this chapter—

(1) The term "person" includes an individual, firm, partnership, corporation, company, association, or joint-stock association, and includes a trustee, receiver, assignee, or personal representative thereof.

(2) The term "Commission" means the Interstate Commerce Commission.

(3) The term "State" means a State of the United States or the District of Columbia.

(4) The term "United States" means the States of the United States and the District of Columbia.

(5) The term "freight forwarder" means any person which (otherwise than as a carrier subject to chapters 1, 8, or 12 of this title) holds itself out to the general public as a common carrier to transport or provide transportation of property, or any class or classes of property, for compensation, in interstate commerce, and which, in the ordinary and usual course of its undertaking, (A) assembles and consolidates or provides for assembling and consolidating shipments of such property, and performs or provides for the performance of break-bulk and distributing operations with respect to such consolidated shipments, and (B) assumes responsibility for the transportation of such property from point of receipt to point of destination, and (C) utilizes, for the whole or any part of the transportation of such shipments, the services of a carrier or carriers subject to chapters 1, 8, or 12 of this title.

(6) The term "interstate commerce" means transportation (A) between a point in a State and a point in another State, whether or not such transportation takes place wholly within the United States; (B) between points within the same State but through any place outside thereof; or (C) from or to any point in the United States to or from any point outside thereof, but only insofar as such transportation takes place within the United States.

(7) The term "service subject to this chapter" means any or all of the service in connection with the transportation in interstate commerce which any person undertakes to perform or provide as a freight forwarder, or which such person is authorized or required by or under the authority of this chapter to perform or provide; but such term shall not include that part of the undertaking of any such person for the performance of which the services of an air carrier subject to the Civil Aeronautics Act of 1938, as amended, are utilized, or for the performance of which transportation by motor vehicle exempted under the provisions of section 303(b)(7a) of this title is utilized.

(8) Wherever reference is made to control (in referring to a relationship between any person or persons and another person or persons), such reference shall be construed to in-

clude actual as well as legal control, whether maintained or exercised through or by reason of the method of or circumstances surrounding organization or operation, through or by common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or through or by any other direct or indirect means; and to include the power to exercise control.

(b) The provisions of this chapter shall not apply (1) to service performed by or under the direction of a cooperative association, as defined in Agricultural Marketing Act, approved June 15, 1929, as amended [12 U.S.C. 1141 et seq.], or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined, or (2) where the property with respect to which service is performed consists of ordinary livestock, fish (including shellfish), agricultural commodities (not including manufactured products thereof), or used household goods, if the person performing such service engages in service subject to this chapter with respect to not more than one of the classifications of property above specified.

(c) The provisions of this chapter shall not be construed to apply (1) to the operations of a shipper, or a group or association of shippers, in consolidating or distributing freight for themselves or for the members thereof, on a nonprofit basis, for the purpose of securing the benefits of carload, truckload, or other volume rates, or (2) to the operations of a warehouseman or other shippers' agent, in consolidating or distributing pool cars, whose services and responsibilities to shippers in connection with such operations are confined to the terminal area in which such operations are performed.

(Feb. 4, 1887, ch. 104, pt. IV, § 402, as added May 16, 1942, ch. 318, § 1, 56 Stat. 284, and amended Dec. 20, 1950, ch. 1140, § 1, 64 Stat. 1113.)

REFERENCES IN TEXT

The Civil Aeronautics Act of 1938, as amended, referred to in subsec. (a)(7), is act June 23, 1938, ch. 601, 52 Stat. 973, as amended, which was classified principally to chapter 9 (§ 401 et seq.) of this title and repealed by Pub. L. 85-726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806. For complete classification of this Act to the Code, see Tables volume.

The Agricultural Marketing Act, approved June 15, 1929, as amended, referred to in subsec. (b), is act June 15, 1929, ch. 24, 46 Stat. 11, as amended, which is classified generally to chapter 7A (§ 1141 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1141j(f) of Title 12 and Tables volume.

AMENDMENTS

1950—Subsec. (a)(5). Act Dec. 20, 1950, inserted "as a common carrier" following "to the general public".

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment of subsec. (a)(5) effective Dec. 20, 1950, see section 4 of act Dec. 20, 1950, set out as an Effective Date of 1950 Amendment note under section 1009 of this title.

§ 1003. General powers and duties of Commission

(a) Rules, regulations, and orders

It shall be the duty of the Commission to administer the provisions of this chapter, and to that end it shall have the authority to make and amend such rules and regulations and to issue such orders as may be necessary to carry out its provisions.

(b) Service requirements

The Commission shall have authority to establish reasonable requirements with respect to continuous and adequate service.

(c) Property loss or damage

The Commission shall have authority to prescribe reasonable rules and regulations governing the filing of surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in such reasonable amount as the Commission may require, to be conditioned to pay, within the amount of such surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, for loss of or damage to property with respect to which a freight forwarder performs service subject to this chapter.

(d) Personal injury

The Commission shall have authority to prescribe reasonable rules and regulations governing the filing of surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in such reasonable amount as the Commission may require, conditioned to pay, within the amount of such surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, any final judgment recovered against a freight forwarder on account of bodily injuries to or death of any person, or loss of or damage to property (except property referred to in subsection (c) of this section), resulting from the negligent operation, maintenance, or use of motor vehicles operated by or under the direction and control of such freight forwarder, in service subject to this chapter, in the performance of transfer, collection, or delivery services.

(e) Inquiries into the management of business of freight forwarders

The Commission shall have authority, for purposes of the administration of the provisions of this chapter, to inquire into and report on the management of the business of freight forwarders, and to inquire into and report on the management of the business of persons controlling, controlled by, or under a common control with freight forwarders, to the extent that the business of such persons is related to the management of the business of one or more such freight forwarders, and the Commission shall keep itself informed as to the manner and method in which the same are conducted. The Commission may obtain from such freight forwarders and persons such information as the Commission deems necessary to carry out the provisions of this chapter; and may transmit to Congress from time to time, such recommendations (including recommendations as to additional legislation) as the Commission may deem necessary.

(f) Investigations

The Commission may investigate, either upon complaint or upon its own initiative, whether any freight forwarder has failed to comply with any provision of this chapter or with any order, rule, regulation, or requirement issued or established pursuant thereto, and, after notice and hearing, take appropriate action to compel compliance therewith. Whenever the Commission is of opinion that any complaint does not state reasonable grounds for action on its part, it may dismiss such complaint.

(Feb. 4, 1887, ch. 104, pt. IV, § 403, as added May 16, 1942, ch. 318, § 1, 56 Stat. 285.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1010 of this title.

§ 1004. Rates, charges, and practices

(a) Duty of freight forwarder to furnish services

It shall be the duty of every freight forwarder to provide and furnish, upon reasonable request therefor, the service subject to this chapter covered by its permit issued under this chapter, and to establish, observe, and enforce just and reasonable rates and charges therefor and just and reasonable classifications, regulations, and practices relating thereto and to the issuance, form, and substance of receipts and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation in service subject to this chapter, the facilities for such transportation, and all other matters relating to or connected with such transportation, and every unjust or unreasonable rate, charge, classification, regulation, or practice is prohibited and declared unlawful.

(b) Preferences or advantages by freight forwarders

It shall be unlawful for any freight forwarder, in service subject to this chapter, to make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, port district, gateway, transit point, locality, region, district, territory, or description of traffic in any respect whatsoever; or to subject any particular person, port, port district, gateway, transit point, locality, region, district, territory, or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided*, That this subsection shall not be construed to apply to discriminations, prejudice, or disadvantage to the traffic of any carrier of whatever description.

(c) Preferences or advantages by common carriers

It shall be unlawful for any common carrier subject to chapters 1, 8, or 12 of this title to make, give, or cause any undue or unreasonable preference or advantage to any freight forwarder, whether or not such freight forwarder is controlled by such carrier, in any respect whatsoever; or to subject any freight forwarder, whether or not such freight forwarder is controlled by such carrier, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

(d) Joint loading agreements

Nothing in this chapter shall be construed to prohibit any freight forwarder from entering into an agreement with another freight forwarder for the joint loading of traffic between points in transportation subject to this chapter, except that the Commission may cancel, suspend, or require the modification of any such agreement which it finds, after reasonable opportunity for hearing, to be inconsistent with the national transportation policy declared in this Act.

(Feb. 4, 1887, ch. 104, pt. IV, § 404, as added May 16, 1942, ch. 318, § 1, 56 Stat. 286.)

REFERENCES IN TEXT

The national transportation policy, referred to in subsec. (d), is set out as a note preceding section 1001 of this title.

This Act, referred to in subsec. (d), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 1001 et seq.) and chapters 1, 8, 12, and 19 (§§ 1 et seq., 301 et seq., 901 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

EFFECTIVE DATE

Effective date of section, see Effective Date note set out under section 1001 of this title.

§ 1005. Tariffs of freight forwarders

(a) Publication

Every freight forwarder shall file with the Commission and print, and keep open to public inspection, tariffs showing its rates and charges for service subject to this chapter, and all classifications, rules, regulations, and practices with respect thereto. Such tariffs shall become effective only after thirty days' notice, and shall plainly state the points between which property will be transported, the classification of property, and, separately, all terminal charges, or other charges which the Commission shall require to be so stated, all privileges or facilities granted or allowed, and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such rates or charges, or the value of the service rendered to the shipper or consignee.

(b) Statement of charges

All rates and charges of freight forwarders for service subject to this chapter shall be stated in lawful money of the United States. The Commission shall by regulations prescribe the form and manner in which the tariffs to which this section applies shall be published, filed, and posted; and the Commission is authorized to reject any tariff filed with it which is not in accordance with this section and with such regulations. Any tariff so rejected by the Commission shall be void and its use shall be unlawful.

(c) Uniform charges; remissions

No freight forwarder shall charge or demand or collect or receive a greater or less or different compensation for or in connection with service subject to this chapter than the rates or charges specified therefor in its tariffs lawfully in effect; and no freight forwarder shall refund

or remit in any manner or by any device any portion of the rates or charges so specified, or extend to any person any privileges or facilities in connection with such service and affecting the value thereof except such as are specified in its tariffs: *Provided*, That the provisions of section 22 of this title (relating to transportation free or at reduced rates), insofar as such provisions relate to transportation or service in the case of property, shall apply with respect to freight forwarders, in the performance of service subject to this chapter, with like force and effect as in the case of the persons and service to which such provisions are specifically applicable.

(d) Notice of proposed changes

No change shall be made in any rate, charge, classification, regulation, or practice specified in any effective tariff of a freight forwarder for or in connection with service subject to this chapter, except after thirty days' notice of the proposed change, filed and posted in accordance with this section. Such notice shall plainly state the change proposed to be made and the time when such change will take effect. The Commission may, in its discretion and for good cause shown, allow changes upon notice less than that herein specified, or modify the requirements of this section with respect to posting and filing of tariffs, either in particular instances or by general order applicable to special circumstances or conditions.

(e) Preconditions to engaging in service

No freight forwarder shall engage in service subject to this chapter unless the rates and charges for such service have been filed and published in accordance with the provisions of this section.

(Feb. 4, 1887, ch. 104, pt. IV, § 405, as added May 16, 1942, ch. 318, § 1, 56 Stat. 287.)

EFFECTIVE DATE

Effective date of section, see Effective Date note set out under section 1001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1006, 1010 of this title.

§ 1006. Commission authority over rates and practices

(a) Complaint

Any person may make complaint in writing to the Commission that anything done or omitted to be done by any freight forwarder is or will be in violation of this chapter. Every complaint shall state fully the facts complained of and the reasons for such complaint. If such freight forwarder shall not satisfy the complaint within a time specified by the Commission, or there shall be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

(b) Prescription of lawful rates

Whenever, after hearing, upon complaint or in an investigation on its own initiative, the Commission shall be of opinion that any rate or charge demanded, charged, or collected for service subject to this chapter, or any classification, regulation, or practice relating thereto, is or will be unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any provision of this chapter, it shall determine and prescribe the lawful rate or charge or the maximum or minimum, or maximum and minimum, rate or charge thereafter to be observed, or the lawful classification, regulation, or practice thereafter to be made effective.

(c) Evidence

In any proceeding to determine the justness or reasonableness of any rate or charge of any freight forwarder, for service subject to this chapter, there shall not be taken in consideration or allowed as evidence or elements of value of the property of such forwarder either goodwill, earning power, or the permit under which such forwarder is operating; and in applying for and receiving a permit under this chapter any such forwarder shall be deemed to have agreed to the provisions of this subsection on its own behalf and on behalf of all transferees of such permit.

(d) Factors considered in determining reasonable rates

In the exercise of its power to prescribe just and reasonable rates and charges of freight forwarders, and classifications, regulations, and practices relating thereto, the Commission shall give due consideration, among other factors, to the inherent nature of freight forwarding; to the effect of rates upon the movement of traffic by the freight forwarders for which the rates and charges are prescribed; to the need, in the public interest, of adequate and efficient freight-forwarder service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable freight forwarders, under honest, economical, and efficient management, to provide such service.

(e) Investigation of tariffs

Whenever there shall be filed with the Commission, under this chapter, any tariff stating a new rate, charge, classification, regulation, or practice, the Commission may upon complaint or upon its own initiative at once, and, if it so orders, without answer or other formal pleading, but upon reasonable notice, enter upon an investigation concerning the lawfulness of such rate, charge, classification, regulation, or practice, and, pending such hearing and the decision thereon, the Commission, by filing with such tariff and delivering to the freight forwarder affected thereby, a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such tariff and defer the use of such rate, charge, classification, regulations, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after hearing, whether completed before or after the rate, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding instituted after such rate, charge, classification, regulation, or practice had become effective. If the proceeding shall not have been concluded and an order made within the period of suspension, the proposed rate, charge, classification, regulation, or

practice shall go into effect at the end of such period: *Provided, however,* That, subject to section 1005(b) of this title, this subsection shall not apply to any initial tariff filed prior to the expiration of ninety days after May 16, 1942. At any hearing involving a change in a rate, charge, or classification, or in a rule, regulation, or practice, the burden of proof shall be upon the freight forwarder to show that the proposed changed rate, charge, classification, rule, regulation, or practice is just and reasonable.

(f) Notice to States; joint hearings

Whenever in any investigation under this chapter, or in an investigation instituted upon petition of the freight forwarder concerned, which petition is authorized to be filed, there shall be brought in issue any rate, charge, classification, regulation, or practice of any freight forwarder, made or imposed by authority of any State, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons subject to this chapter, with respect to the relationship between rate structures and practices of such persons subject to the jurisdiction of such State bodies and of the Commission; and to that end the Commission is authorized, under rules to be prescribed by it, to hold joint hearings with any such State regulatory bodies upon any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this chapter. Whenever in any such investigation the Commission, after full hearing, finds that any such rate, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate commerce, which is forbidden and declared to be unlawful, it shall prescribe the rate or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, charges, classifications, regulations, and practices shall be observed while in effect by the freight forwarders parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

(Feb. 4, 1887, ch. 104, pt. IV, § 406, as added May 16, 1942, ch. 318, § 1, 56 Stat. 288.)

EFFECTIVE DATE

Effective date of section, see Effective Date note set out under section 1001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1006a of this title.

§ 1006a. Actions for recovery of charges; limitation of actions; definition; effective date; actions by or against United States

(1) All actions at law by freight forwarders subject to this chapter for the recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.

(2) For recovery of reparations, action at law shall be begun against freight forwarders subject to this chapter within two years from the time the cause of action accrues, and not after, and for recovery of overcharges, action at law shall be begun against freight forwarders subject to this chapter within three years from the time the cause of action accrues, and not after, subject to paragraph (3) of this section, except that if claim for the overcharge has been presented in writing to the freight forwarder within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the freight forwarder to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

(3) If on or before expiration of the three-year period of limitation in paragraph (2) of this section a freight forwarder subject to this chapter begins action under paragraph (1) of this section for recovery of charges in respect of the same service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or such charges are collected by the freight forwarder.

(4) The cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the freight forwarder, and not after.

(5) The term "reparations" as used in this section means damages resulting from charges for transportation services to the extent that the Commission, upon complaint made as provided in section 1006 of this title finds them to have been unjust and unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial.

(6) The term "overcharges" as used in this section shall be deemed to mean charges for service in excess of those applicable thereto under the tariffs lawfully on file with the Commission.

(7) The provisions of this section shall apply only to cases in which the cause of action may accrue after June 29, 1949.

(8) The provisions of this section shall extend to and embrace all transportation of property for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this chapter: *Provided, however,* That with respect to such transportation of property for or on behalf of the United States, the periods of limitation herein provided shall be extended to include three years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 66 of this title, whichever is later.

(Feb. 4, 1887, ch. 104, pt. IV, § 406a, as added June 29, 1949, ch. 272, § 5, 63 Stat. 281, and amended Aug. 26, 1958, Pub. L. 85-762, § 1(7), (8), 72 Stat. 860; Sept. 6, 1965, Pub. L. 89-170, § 7, 79 Stat. 651.)

AMENDMENTS

1965—Par. (2). Pub. L. 89-170, § 7(a), authorized the bringing of actions at law for recovery of reparations within 2 years from the time the cause of action accrues.

Par. (5). Pub. L. 89-170, § 7(b), added par. (5). Former par. (5) redesignated as par. (6).

Par. (6). Pub. L. 89-170, § 7(b), redesignated par. (5) as par. (6). Former par. (6) redesignated as par. (7).

Par. (7). Pub. L. 89-170, § 7(b), redesignated par. (6) as par. (7). Former par. (7) redesignated as par. (8).

Par. (8). Pub. L. 89-170, § 7(b), redesignated par. (7) as par. (8).

1958—Pars. (1) to (3). Pub. L. 85-762, § 1(7), substituted three-year limitations for the former two-year limitations.

Par. (7). Pub. L. 85-762, § 1(8), added par. (7).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-762 applicable only to cause of action which accrues on or after Aug. 26, 1958, see section 3 of Pub. L. 85-762, set out as an Effective Date of 1958 Amendment note under section 16 of this title.

§ 1007. Motor carrier rates applicable to small parcel forwarding

In the establishment of rates or charges, classifications, rules, or regulations by common carriers by motor vehicle subject to chapter 8 of this title, consideration may be given to the type of property tendered for transportation by any freight forwarder engaged in service with respect to parcels which do not exceed seventy pounds in weight or one hundred inches in length and girth combined, with a view to affording, in the case of such transportation, rates or charges as low as may be consistent with the receiving of reasonably adequate compensation by the carriers transporting such property.

(Feb. 4, 1887, ch. 104, pt. IV, § 407, as added May 16, 1942, ch. 318, § 1, 56 Stat. 289.)

§ 1008. Authority for assembling and distribution rates

Nothing in this Act shall be construed to make it unlawful for common carriers subject to chapters 1, 8, or 12 of this title to establish and maintain assembling rates or charges and/or distribution rates or charges, and classifications, rules, and regulations with respect thereto, applicable to freight forwarders and others who employ or utilize the instrumentalities or services of such common carriers under like conditions, which differ from other rates or charges, classifications, rules, or regulations which contemporaneously apply with respect to the employment or utilization of the same instrumentalities or services, if such difference is justified by a difference in the respective conditions under which such instrumentalities or services are employed or utilized. For the purposes of this section (1) the term "assembling rates or charges" means rates or charges for the transportation of less-than-carload or less-than-truckload shipments into a point for further movement beyond as part of a carload or truckload shipment, and (2) the term "distribution rates or charges" means rates or charges for the transportation of less-than-carload or less-than-truckload shipments moving from a point into which such shipments have moved as a part of a carload or truckload shipment. The provisions of this section shall not be construed to authorize the establishment of assembling rates or charges or distribution rates or charges covering the line haul transportation between the principal concentration point and the principal break-bulk point.

(Feb. 4, 1887, ch. 104, pt. IV, § 408, as added May 16, 1942, ch. 318, § 1, 56 Stat. 290.)

REFERENCES IN TEXT

This Act, referred to in text, means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 1001 et seq.) and chapters 1, 8, 12, and 19 (§§ 1 et seq., 301 et seq., 901 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

§ 1009. Utilization by freight forwarders of services of common carriers by motor vehicle

(a) Nothing in this Act shall be construed to prevent freight forwarders subject to this chapter from entering into or continuing to operate under contracts with common carriers by motor vehicle subject to chapter 8 of this title, governing the utilization by such freight forwarders of the services and instrumentalities of such common carriers by motor vehicle and the compensation to be paid therefor: *Provided*, That in the case of such contracts it shall be the duty of the parties thereto to establish just, reasonable, and equitable terms, conditions, and compensation which shall not unduly prefer or prejudice any of such participants or any other freight forwarder and shall be consistent with the national transportation policy declared in this Act: *And provided further*, That in the case of line-haul transportation between concentration points and break-bulk points in truckload lots where such line-haul transportation is for a total distance of four hundred and fifty highway-miles or more, such contracts shall not permit payment to common carriers by motor vehicle of compensation which is lower than would be received under rates or charges established under chapter 8 of this title.

(b) Contracts entered into or continued pursuant to subsection (a) of this section shall be filed with the Commission in accordance with such reasonable rules and regulations as the Commission shall prescribe. Whenever, after hearing, upon complaint or upon its own initiative, the Commission is of opinion that any such contract, or its terms, conditions, or compensation is or will be inconsistent with the provisions and standards set forth in subsection (a) of this section, the Commission shall by order prescribe the terms, conditions, and compensation of such contract which are consistent therewith.

(Feb. 4, 1887, ch. 104, pt. IV, § 409, as added May 16, 1942, ch. 318, § 1, 56 Stat. 290, and amended Nov. 12, 1943, ch. 299, §§ 1, 2, 57 Stat.

590; May 16, 1945, ch. 128, 59 Stat. 169; Feb. 20, 1946, ch. 32, 60 Stat. 21; Dec. 20, 1950, ch. 1140, § 2, 64 Stat. 1114.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 1001 et seq.) and chapters 1, 8, 12, and 19 (§§ 1 et seq., 301 et seq., 901 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

AMENDMENTS

1950—Act Dec. 20, 1950, authorized freight forwarders and common carriers by motor vehicle, subject to certain conditions and limitations, to enter into contracts governing the utilization of the common carriers' services and instrumentalities by the freight forwarders and the compensation to be paid.

1946—Act Feb. 20, 1946, made it the duty of the Commission to prescribe reasonable and just terms and conditions under which freight forwarders may utilize the services of common carriers by motor vehicle, under agreements and gave specific direction to the Commission with respect to its authority in the case of line-haul transportation between concentration points and break-bulk points in truck load lots.

1945—Act May 16, 1945, substituted "forty-five months" for "thirty-six months" wherever appearing.

1943—Act Nov. 12, 1943, substituted "thirty-six months" for "eighteen months" wherever appearing, and amended par. (4) of subsec. (a) generally.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 4 of act Dec. 20, 1950, provided that:

"This Act [amending this section and section 1002 of this title] shall take effect on the date of its enactment [Dec. 20, 1950], except that—

"(1) no contract entered into pursuant to section 409 of the Interstate Commerce Act, as amended by section 2 of this Act [this section], shall become effective prior to the expiration of nine months after the date of the enactment of this Act [Dec. 20, 1950]; and

"(2) until the expiration of nine months after the date of the enactment of this Act [Dec. 20, 1950] freight forwarders and common carriers by motor vehicle may operate under joint rates or charges in accordance with the provisions of subsection (b) of section 409 of the Interstate Commerce Act [subsec. (b) of this section] as that subsection was in force immediately prior to the date of the enactment of this Act [Dec. 20, 1950]."

SECTION 1013 AS UNAFFECTED BY ACT DECEMBER 20, 1950

Section 3 of act Dec. 20, 1950, provided that: "Nothing in this Act [amending this section and section 1002 of this title] shall be construed as amending or affecting section 413 of the Interstate Commerce Act [section 1013 of this title]."

§ 1010. Permits

(a) Precondition to service; exceptions; certain persons engaged in service

(1) No person shall engage in service subject to this chapter unless such person holds a permit, issued by the Commission, authorizing such service; except that (1) any person engaged in service subject to this chapter when this section takes effect may continue to engage in such service for a period of one hundred and eighty days thereafter without a permit, and (2) if application for a permit is made to the Commission by such person within such period, such person may, under such regulations as the Commission shall prescribe, continue to engage in such service subject to this chapter until otherwise ordered by the Commission.

(2) Subject to the provisions of the last sentence of subsection (c) of this section, if any person (or his predecessor in interest) was engaged in service on August 26, 1958, between places in the Territory of Alaska and places in the United States, and between places in the Territory of Alaska which service either would have been subject to this chapter or which, in conjunction with the services of other carriers, resulted in the transportation of property between such places whether or not all of such transportation would have been service subject to this chapter, and has so operated since that time (or if engaged in furnishing seasonal service only, was engaged in such operations in the year 1958 during the season ordinarily covered by its operations, and such operations have not been discontinued), except in either instance as to interruptions of service over which such person or his predecessor in interest had no control, a permit shall be issued authorizing such operations without further proceedings if application for such permit is made as provided herein on or before December 31, 1960. Pending the determination of any such application, the continuance of such operations without a permit shall be lawful. Applications for permits under this paragraph shall be filed with the Commission in writing, and in such form, contain such information, and be accompanied by proof of service upon such interested parties as the Commission shall require.

(3) Subject to the provisions of the last sentence of subsection (c) of this section, if any person (or his predecessor in interest) was engaged in service on June 27, 1959, between places in the Territory of Hawaii and places in the United States, and between places in the Territory of Hawaii, which service either would have been subject to this chapter or which, in conjunction with the services of other carriers, resulted in the transportation of property between such places whether or not all of such transportation would have been service subject to this chapter, and has so operated since that time (or if engaged in furnishing seasonal service only, was engaged in such operations in the year 1959 during the season ordinarily covered by its operations, and such operations have not been discontinued), except in either instance as to interruptions of service over which such person or his predecessor in interest had no control, a permit shall be issued authorizing such operations without further proceedings if application for such permit is made as provided herein on or before December 31, 1960. Pending the determination of any such application, the continuance of such operations without a permit shall be lawful. Applications for permits under this paragraph shall be filed with the Commission in writing, and in such form, contain such information, and be accompanied by proof of service upon such interested parties as the Commission shall require.

(b) Application

Application for a permit shall be made in writing to the Commission, be verified under oath, and shall be in such form and contain

such information and be accompanied by proof of service upon such interested parties as the Commission shall, by regulations, require.

(c) Issuance

The Commission shall issue a permit to any qualified applicant therefor, authorizing the whole or any part of the service covered by the application, if the Commission finds that the applicant is ready, able, and willing properly to perform the service proposed, and that the proposed service, to the extent authorized by the permit, is or will be consistent with the public interest and the national transportation policy declared in this Act; otherwise such application shall be denied. No such permit shall be issued to any common carrier subject to chapters 1, 8, or 12 of this title; but no application made under this section by a corporation controlled by, or under common control with, a common carrier subject to said chapters shall be denied because of the relationship between such corporation and such common carrier.

(d) Corporations controlled by certain common carriers

The Commission shall not deny authority to engage in the whole or any part of the proposed service covered by any application made under this section by a corporation controlled by, or under common control with, a common carrier subject to chapter 1 of this title solely on the ground that such service will be in competition with the service subject to this chapter performed by any other freight forwarder or freight forwarders.

(e) Specifications; terms and conditions

Any permit issued under this section shall specify the nature or general description of the property with respect to which service subject to this chapter may be performed, and the territory within which, and the territories from which and to which, service subject to this chapter may be performed, under authority of such permit. At the time of issuance, and from time to time thereafter, there shall be attached to the exercise of the privileges granted by any such permit such reasonable terms, conditions, and limitations as are necessary to carry out the requirements of this chapter or those lawfully established by the Commission pursuant thereto; but no such terms, conditions, or limitations shall restrict the right of the freight forwarder to add to its equipment, facilities, or services within the scope of such permit, as the development of the business and the demands of the public shall require.

(f) Effective date; duration

Permits shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as herein provided. Any such permit may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may upon complaint, or on the Commission's own initiative, after notice and hearing, be suspended, modified, or revoked, in whole or in part, for willful failure to comply with any provision of this chapter, or with any lawful order, rule, or regulation of the Commission promulgated thereunder, or with any term, condition, or limitation of such permit: *Provided, however,* That no such permit shall be revoked (except upon application of the holder) unless the holder thereof fails to comply, within a reasonable time, not less than thirty days, to be fixed by the Commission, with a lawful order of the Commission, commanding obedience to the provision of this chapter, or to the rule or regulation of the Commission thereunder, or to the term, condition, or limitation of such permit, found by the Commission to have been violated by such holder: *Provided further,* That the right to engage in service subject to this chapter under authority of any permit or any application filed pursuant to the provisions of this section may be suspended by the Commission, upon reasonable notice of not less than fifteen days to the forwarder, but without hearing or other proceedings, for failure to comply, and until compliance, with the provisions of section 1005(a) of this title or with any lawful order, rule, or regulation of the Commission promulgated thereunder or under the provisions of section 1003(c) or (d) of this title.

(g) Transfers

Any such permit, or any right to engage in service subject to this chapter pending disposition of any application made to the Commission for a permit, and any right to a permit when issued, may be transferred, in accordance with such rules and regulations as the Commission shall prescribe to insure compliance with the provisions of this chapter, if the Commission finds that, with respect to the service covered by such right or permit, the transferee thereof satisfies the conditions prescribed in subsection (c) of this section with respect to the original issuance of permits: *Provided, however,* That if the proposed transfer would affect the interests of employees of a freight forwarder, the Commission shall require, as a prerequisite thereto, a fair and equitable arrangement to protect the interests of the employees affected.

(h) Direct railroad, water, or motor-carrier operations

Permits issued under this chapter shall not authorize the holder thereof to conduct any direct railroad, water, or motor-carrier operations, except motor-vehicle operations in transportation which, pursuant to the provisions of section 302(c)(1) of this title, is to be regulated as service subject to this chapter.

(i) Abandonment of service

No freight forwarder which is controlled by, or under common control with, a common carrier subject to chapters 1, 8, or 12 of this title shall abandon all or any portion of its service subject to this chapter unless and until there shall first have been obtained from the Commission a certificate that such abandonment is consistent with the public interest and the national transportation policy declared in this Act. Any such abandonment contrary to the provisions of this subsection may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, any commission or regulating body of the State or States affected, or any party in interest; and any such freight forwarder or any such carrier controlling or under common control with such freight forwarder which, or any director, offi-

cer, receiver, operating trustee, lessee, agent, or person acting for or employed by such freight forwarder or carrier who, knowingly authorizes, consents to, or permits any violation of the provisions of this subsection shall upon conviction thereof be punished by a fine of not more than $5,000.

(Feb. 4, 1887, ch. 104, pt. IV, § 410, as added May 16, 1942, ch. 318, § 1, 56 Stat. 291, and amended Aug. 28, 1957, Pub. L. 85-176, 71 Stat. 452; July 12, 1960, Pub. L. 88-615, § 6, 74 Stat. 385.)

REFERENCES IN TEXT

The national transportation policy, referred to in subsecs. (c) and (i), is set out as a note preceding section 1001 of this title.

This Act, referred to in subsecs. (c) and (i), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 1001 et seq.) and chapters 1, 8, 12, and 19 (§§ 1 et seq., 301 et seq., 901 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

AMENDMENTS

1960—Subsec. (a). Pub. L. 86-615 designated existing provisions as par. (1) and added pars. (2) and (3).

1957—Subsec. (d). Pub. L. 85-176 inserted the words "by a corporation controlled by, or under common control with, a common carrier subject to chapter 1 of this title".

ADMISSION OF ALASKA AND HAWAII TO STATEHOOD

Alaska was admitted into the Union on Jan. 3, 1959, upon the issuance of Proc. No. 3269, eff. Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, and Hawaii was admitted into the Union on Aug. 21, 1959, upon the issuance of Proc. No. 3309, eff. Aug. 21, 1959, 24 F.R. 6868, 73 Stat. c74. For Alaska Statehood Law, see Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For Hawaii Statehood Law, see Pub. L. 86-3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding section 491 of title 48.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1011, 1017 of this title.

§ 1011. Relationships between freight forwarders and other persons

(a) Control of carrier

(1) It shall be unlawful for a freight forwarder, or any person controlling, controlled by, or under common control with a freight forwarder, to acquire control of a carrier subject to chapters 1, 8, or 12 of this title; except that this subsection shall not limit the right of any carrier subject to said chapters to acquire control of any other carrier subject to said chapters in accordance with the provisions of section 5 of this title.

(2) It shall be unlawful to continue to maintain control accomplished or effectuated after this subsection takes effect and in violation of its provisions.

(b) Manufacturers and others engaged in service

It shall be unlawful for any person whose principal business is that of manufacturing and selling and/or buying and selling articles or commodities, and whose business operations are of such a character that services of a freight forwarder or forwarders (or similar assembling, consolidating, and shipping operations performed by such person for itself) are commonly used in connection with the transportation of such articles or commodities, or for any person controlling, controlled by, or under common control with such person, to engage in service subject to this chapter: *Provided, however,* That the Commission shall have power to issue a permit, under section 1010 of this title, to any such person upon a finding that the proposed service will be consistent with the public interest and with the national transportation policy declared in this Act and that the applicant is otherwise qualified under section 1010 of this title: *And provided further,* That any such person who has been continuously engaged in business as a freight forwarder since October 1, 1941, and is on May 16, 1942, so engaged, shall have the same authority to continue to engage in service subject to this chapter, until otherwise ordered by the Commission, as is granted to other persons under the provisions of section 1010(a) of this title.

(c) Ownership in stock of freight forwarder by agents or others associated with common carriers

After the expiration of six months from May 16, 1942, it shall be unlawful for any director, officer, employee, or agent of any common carrier subject to chapters 1, 8, or 12 of this title or of any person controlling, controlled by, or under common control with such a common carrier, in his or their own personal pecuniary interest, to own, lease, control, or hold stock in, any freight forwarder, directly or indirectly; but this subsection shall not forbid or preclude the holding of a director's qualifying shares of stock from which no personal pecuniary benefit is derived by the holder.

(d) Authority of commission to investigate

The Commission is hereby authorized, upon complaint, or upon its own initiative without complaint, but after notice and hearing, to investigate and determine whether any person is violating the provisions of subsections (a), (b), or (c) of this section. If the Commission finds after such investigation that such person is violating any of such provisions, it shall by order require such persons to take such action as may be necessary, in the opinion of the Commission, to prevent continuance of such violation. The provisions of this subsection shall be in addition to, and not in substitution for, any other enforcement provisions contained in, or applicable for purposes of enforcement of, this chapter.

(e) Jurisdiction

The district courts of the United States shall have jurisdiction upon the complaint of the Commission, alleging a violation of any of the provisions of subsections (a), (b), or (c) of this section or disobedience of any any[1] order issued by the Commission thereunder by any person, to issue such writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain such person from violation of such provision or to compel obedience to such order.

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[1] So in original.

(f) Supplemental orders

The Commission may from time to time, for good cause shown, make such orders supplemental to any order made under the foregoing provisions of this section as it may deem necessary or appropriate.

(g) Control of freight forwarders

Nothing in this Act shall be construed to make it unlawful for any common carrier subject to chapters 1, 8, or 12 of this title or any person controlling such a common carrier, to have or to acquire control of a freight forwarder or freight forwarders; and, in any case where such control exists, no rate, charge, classification, rule, regulation, or practice of the common carrier or of any freight forwarder controlled by such common carrier, or under common control with such common carrier, shall be held to be unlawful under any provision of this Act because of the relationship between such common carrier and such freight forwarder.

(Feb. 4, 1887, ch. 104, pt. IV, § 411, as added May 16, 1942, ch. 318, § 1, 56 Stat. 293.)

REFERENCES IN TEXT

The national transportation policy, referred to in subsec. (b), is set out as a note preceding section 1001 of this title.

This Act, referred to in subsecs. (b), (g), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 1001 et seq.) and chapters 1, 8, 12, and 19 (§§ 1 et seq., 301 et seq., 901 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

§ 1012. Accounts, records, and reports

(a) Required reports

For purposes of administration of the provisions of this chapter, the Commission is authorized to require annual, periodical, or special reports from freight forwarders and associations (as defined in this section), and to prescribe the manner and form in which such reports shall be made, and to require from such forwarders and associations specific, full, true, and correct answers to all questions upon which the Commission may deem information to be necessary. Such annual report shall give an account of the affairs of the freight forwarder or association in such form and detail as may be prescribed by the Commission. The Commission may, in its discretion, for purposes of administration of the provisions of this chapter, prescribe a uniform system of accounts applicable to freight forwarders, and the period of time within which they shall have such uniform system of accounts, and the manner in which such accounts shall be kept. The Commission may also require any such forwarder to file with it a true copy of any contract or agreement between such forwarder and any person in relation to transportation facilities, service, or traffic affected by the provisions of this chapter.

(b) Contents

Such annual reports shall contain all the required information for the period of twelve months ending on the 31st day of December in each year, unless the Commission shall specify a different date, and shall be made out under oath and filed with the Commission at its office in Washington within three months after the close of the year for which the report is made, unless additional time be granted in any case by the Commission. Such periodical or special reports as may be required by the Commission under subsection (a) of this section shall also be under oath, whenever the Commission so requires.

(c) Form

The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by freight forwarders, with respect to service subject to this chapter, and the length of time such accounts, records, and memoranda shall be preserved, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of money; and it shall be unlawful for freight forwarders to keep any accounts, books, records, and memoranda contrary to any rule, regulation, or order of the Commission with respect thereto.

(d) Inspections of land, buildings, and equipment

The Commission or its duly authorized special agents, accountants, or examiners shall at all times have access to and authority, under its order, to inspect and examine any and all lands, buildings, or equipment of freight forwarders and of associations (as defined in this section), and shall have authority to inspect and copy any and all accounts, books, records, memoranda, correspondence, and other documents of freight forwarders, and such accounts, books, records, memoranda, correspondence, and other documents of any person controlling, controlled by, or under common control with any freight forwarder, as the Commission deems relevant to such person's relation to or transactions with such freight forwarder. Freight forwarders and persons shall submit their accounts, books, records, memoranda, correspondence, and other documents for the inspection and copying authorized by this subsection, and freight forwarders shall submit their lands, buildings, and equipment for examination and inspection, to any duly authorized special agent, accountant, or examiner of the Commission upon demand and the display of proper credentials.

(e) Preservation of records

The Commission may issue orders specifying such operating, accounting, or financial papers, records, books, correspondence, or documents of freight forwarders as may after a reasonable time be destroyed, and prescribing the length of time the same shall be preserved.

(f) Definitions

As used in this section, the words "keep" and "kept" shall be construed to mean made, prepared, or compiled, as well as retained; and the term "association" means an association or organization maintained by or in the interest of any group of freight forwarders subject to this chapter which performs any service, or engages in any activities, in connection with any traffic, transportation, or facilities subject to this Act.

(Feb. 4, 1887, ch. 104, pt. IV, § 412, as added May 16, 1942, ch. 318, § 1, 56 Stat. 294, and

amended Aug. 2, 1949, ch. 379, §§ 20–22, 63 Stat. 489.)

REFERENCES IN TEXT

This Act, referred to in subsec. (f), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 1001 et seq.) and chapters 1, 8, 12, and 19 (§§ 1 et seq., 301 et seq., 901 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

AMENDMENTS

1949—Subsec. (a). Act Aug. 2, 1949, § 20, made subsec. (a) applicable to associations or organizations maintained by or in the interest of freight forwarders.

Subsec. (d). Act Aug. 2, 1949, § 21, made subsec. (d) applicable to associations as defined in subsec. (f) of this section.

Subsec. (f). Act Aug. 2, 1949, § 22, defined the term "association".

§ 1013. Bills of lading and delivery of property

The provisions of section 20(11) and (12) of this title, together with such other provisions of chapter 1 of this title (including penalties) as may be necessary for the enforcement of such provisions, shall apply with respect to freight forwarders, in the case of service subject to this chapter, with like force and effect as in the case of those persons to which such provisions are specifically applicable, and the freight forwarder shall be deemed both the receiving and delivering transportation company for the purposes of section 20(11) and (12) of this title. When the services of a common carrier by motor vehicle subject to chapter 8 of this title are utilized by a freight forwarder for the receiving of property from a consignor in service subject to this chapter, such carrier may, with the consent of the freight forwarder, execute the bill of lading or shipping receipt for the freight forwarder. When the services of a common carrier by motor vehicle subject to chapter 8 of this title are utilized by a freight forwarder for the delivery of property to the consignee named in the freight forwarder's bill of lading, shipping receipt, or freight bill, the property may, with the consent of the freight forwarder, be delivered on the freight bill, and receipted for on the delivery receipt, of the freight forwarder.

(Feb. 4, 1887, ch. 104, pt. IV, § 413, as added May 16, 1942, ch. 318, § 1, 56 Stat. 295.)

EFFECTIVE DATE

Effective date of section, see Effective Date note set out under section 1001 of this title.

§ 1014. Collection of rates and charges

In the case of service subject to this chapter, it shall be unlawful for a freight forwarder, or a common carrier by motor vehicle subject to chapter 8 of this title whose services are utilized by a freight forwarder, to deliver or relinquish possession of property to the consignee named in the bill of lading, shipping receipt, or freight bill of the freight forwarder until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe to govern the settlement of all such rates and charges and to prevent unjust discrimination or undue preference or prejudice: *Provided*, That the provisions of this section shall not be construed to prohibit any such forwarder or carrier from extending credit in connection with rates and charges on freight transported for the United States, for any department, bureau, or agency thereof, or for any State, Territory, or political subdivision thereof, or for the District of Columbia.

(Feb. 4, 1887, ch. 104, pt. IV, § 414, as added May 16, 1942, ch. 318, § 1, 56 Stat. 296.)

EFFECTIVE DATE

Effective date of section, see Effective Date note set out under section 1001 of this title.

§ 1015. Allowances to shippers for transportation service

If the owner of property transported in service subject to this chapter directly or indirectly renders any service connected therewith, or furnishes any instrumentality used therein, the charge and the allowance therefor, to such owner, shall be published in tariffs filed in the manner provided in this chapter and shall be no more than is just and reasonable and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the freight forwarder or forwarders for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order.

(Feb. 4, 1887, ch. 104, pt. IV, § 415, as added May 16, 1942, ch. 318, § 1, 56 Stat. 296.)

§ 1016. Notices and orders

(a) Designated agent for service; service

It shall be the duty of every freight forwarder to file with the Commission a designation in writing of the name and post-office address of an agent upon whom or which service of notices or orders may be made under this chapter. Such designation may from time to time be changed by like writing similarly filed. Service of notices or orders in proceedings under this chapter may be made upon such forwarder by personal service upon it or upon an agent so designated by it, or by mail addressed to it or to such agent at the address filed. In default of such designation, service of any notice or order may be made by posting in the office of the Secretary of the Commission. Whenever notice or order is served by mail, as provided herein, the date of mailing shall be considered as the time of service.

In proceedings before the Commission involving the lawfulness of rates, charges, classifications, or practices, service of notice upon an attorney in fact of a freight forwarder who has filed a tariff in behalf of such freight forwarder shall be deemed to be due and sufficient service upon the freight forwarder.

(b) Suspension or modification of orders

The Commission may suspend, modify, or set aside its orders upon such notice and in such manner as it shall deem proper.

(c) Effective date of orders; duration

Except as otherwise provided in this part, all orders of the Commission shall take effect within such reasonable time, not less than thirty days, as the Commission may prescribe and shall continue in force until its further order, or for a specified period of time, according as shall be prescribed in the order, unless the same shall be suspended, modified, or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction.

(d) Compliance

It shall be the duty of every freight forwarder, its agents, and employees to observe and comply with such orders so long as the same shall remain in effect.

(Feb. 4, 1887, ch. 104, pt. IV, § 416, as added May 16, 1942, ch. 318, § 1, 56 Stat. 296.)

§ 1017. Enforcement and procedure

(a) Application of other provisions

The provisions of sections 12 and 17 of this title, together with such other provisions of chapter 1 of this title (including penalties) as may be necessary for the enforcement of such provisions, and of section 46 of this title shall apply with full force and effect in the administration and enforcement of this chapter.

(b) Application to district court; writs; notice

(1) If any freight forwarder fails to comply with or operates in violation of any provision of this chapter, or any rule, regulation, requirement, or order thereunder, or of any term or condition of any permit, the Commission or the Attorney General of the United States (or, in case of such an order, any party injured by the failure to comply therewith or by the violation thereof) may apply to any district court of the United States having jurisdiction of the parties for the enforcement of such provision of this chapter or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ or writs of injunction or other process, mandatory or otherwise, restraining such freight forwarder and any officer, agent, employee, or representative thereof from further violation of such provision of this chapter or of such rule, regulation, requirement, order, term, or condition, and enjoining obedience thereto.

(2) If any person operates in clear and patent violation of section 1010 of this title, or any rule, regulation, requirement, or order thereunder, any person injured thereby may apply to the district court of the United States for any district where such person so violating operates, for the enforcement of such section, or of such rule, regulation, requirement, or order. The court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such person, his or its officers, agents, employees, and representatives from further violation of such section or of such rule, regulation, requirement, or order; and enjoining upon it or them obedience thereto. A copy of any application for relief filed pursuant to this paragraph shall be served upon the Commission and a certificate of such service shall appear in such application. The Commission may appear as of right in any such action. The party who or which prevails in any such action may, in the discretion of the court, recover reasonable attorney's fees to be fixed by the court, in addition to any costs allowable under the Federal Rules of Civil Procedure, and the plaintiff instituting such action shall be required to give security, in such sum as the court deems proper, to protect the interests of the party or parties against whom any temporary restraining order, temporary injunctive or other process is issued should it later be proven unwarranted by the facts and circumstances.

(3) In any action brought under paragraph (2) of this subsection, the Commission may notify the district court of the United States in which such action is pending that it intends to consider the matter in a proceeding before the Commission. Upon the filing of such a notice the court shall stay further action pending disposition of the proceeding before the Commission.

(c) Record

The Commission shall enter of record a written report of hearings conducted upon complaint, or upon its own initiative without complaint, stating its conclusions, decision, and order; and shall furnish a copy of such report to all parties of record. The Commission may provide for the publication of such reports in the form best adapted for public information and use, and such authorized publications shall, without further proof or authentication, be received as competent evidence of such reports in any court of competent jurisdiction.

(d) Preservation of classifications and tariffs

The copies of classifications and tariffs of rates and charges, and of all contracts, agreements, and arrangements of freight forwarders filed with the Commission under this chapter, and the statistics, tables, and figures contained in the annual or other reports of freight forwarders made to the Commission under this chapter, shall be preserved as public records in the custody of the secretary of the Commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of and extracts from any of said classifications, tariffs, contracts, agreements, arrangements, or reports, made public records as aforesaid, certified by the secretary, under the Commission's seal, shall be received in evidence with like effect as the originals.

(Feb. 4, 1887, ch. 104, pt. IV, § 417, as added May 16, 1942, ch. 318, § 1, 56 Stat. 297, and amended Aug. 7, 1942, ch. 552, § 2, 56 Stat. 746; Sept. 6, 1965, Pub. L. 89-170, § 5, 79 Stat. 650; Oct. 15, 1970, Pub. L. 91-452, title II, § 243(c), 84 Stat. 931.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-452 struck out references to sections 47 and 48 of this title and sections 32 and 33 of Title 15.

1965—Subsec. (b). Pub. L. 89-170 designated existing provision as par. (1) and added pars. (2) and (3).

1942—Subsec. (b). Act Aug. 7, 1942, substituted "freight forwarder" for "carrier" wherever latter appeared.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE

Effective date of section, see Effective Date note set out under section 1001 of this title.

SAVINGS PROVISIONS

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

CROSS REFERENCE

Immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1655 of this title.

§ 1018. Carriers the services of which freight forwarders may utilize

It shall be unlawful, except in the performance within terminal areas of transfer, collection, or delivery services, for freight forwarders to employ or utilize the instrumentalities or services of any carriers other than common carriers by railroad, motor vehicle, or water, subject to this Act; express companies subject to this Act; air carriers subject to the Civil Aeronautics Act of 1938, as amended; common carriers by motor vehicle engaged in transportation exempted under the provisions of section 303(b)(7a) of this title; common carriers by motor vehicle exempted under the provisions of section 304(a)(4a) of this title; common carriers by water engaged in transportation exempted under the provisions of section 903(b) of this title; the Alaska Railroad; common carriers by water operating between Alaskan ports, and between those ports and other ports in the United States or common carriers by water operating between Hawaiian ports, and between those ports and other ports in the United States.

(Feb. 4, 1887, ch. 104, pt. IV, § 418, as added May 16, 1942, ch. 318, § 1, 56 Stat. 297, and amended July 12, 1960, Pub. L. 86-615, § 7, 74 Stat. 385.)

REFERENCES IN TEXT

This Act, referred to in text, means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 1001 et seq.) and chapters 1, 8, 12, and 19 (§§ 1 et seq., 301 et seq., 901 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

The Civil Aeronautics Act of 1938, as amended, referred to in text, is act June 23, 1938, ch. 601, 52 Stat. 973, as amended, which was classified principally to chapter 9 (§ 401 et seq.) of this title and repealed by Pub. L. 85-726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806. For complete classification of this Act to the Code, see Tables volume.

AMENDMENTS

1960—Pub. L. 86-615 included the Alaska Railroad, common carriers by water operating between Alaskan ports, and between those ports and other ports in the United States, and common carriers by water operating between Hawaiian ports, and between those ports and other ports in the United States.

§ 1019. Liability for past acts and omissions

No person shall be subject to any punishment or liability under the provisions of this Act on account of any act done or omitted to be done, prior to the effective date of this chapter, in connection with the establishment, charging, collection, receipt, or payment of rates of freight forwarders, or joint rates or divisions between freight forwarders and common carriers by motor vehicle subject to this Act.

(Feb. 4, 1887, ch. 104, pt. IV, § 419, as added May 16, 1942, ch. 318, § 1, 56 Stat. 298.)

REFERENCES IN TEXT

This Act, referred to in text, means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 1001 et seq.) and chapters 1, 8, 12 and 19 (§§ 1 et seq., 301 et seq., 901 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

The effective date of this chapter, referred to in text, is specified in section 6 of act May 16, 1942, which is set out as an Effective Date note under section 1001 of this title.

§ 1020. Special powers during time of war or other emergency

The provisions of section 1(15)-(17) of this title shall be applicable, in the case of service subject to this chapter, with respect to freight forwarders and other persons, and the service, equipment, and facilities of freight forwarders, with like force and effect as in the case of the carriers and other persons, and the service, equipment, and facilities, to which such provisions are specifically applicable.

(Feb. 4, 1887, ch. 104, pt. IV, § 420, as added May 16, 1942, ch. 318, § 1, 56 Stat. 298.)

CONTINUATION OF PROVISIONS UNTIL TERMINATION OF DECEMBER 16, 1950 NATIONAL EMERGENCY AND SIX MONTHS

Act June 30, 1953, ch. 165, 67 Stat. 115, provided: "That the provisions of section 420 of the Interstate Commerce Act, as amended [this section], as continued in effect by section 1(a)(26) of the Emergency Powers Continuation Act (Public Law 450, Eighty-second Congress) [act July 3, 1952, ch. 570, 66 Stat. 331], and the authorizations conferred and liabilities imposed thereby, shall remain in full force and effect until six months after the termination of the national emergency proclaimed by the President on December 16, 1950 (Proc. 2914, 3 C.F.R., 1950 Supp., p. 71) [Proc. No. 2914, eff. Dec. 16, 1950, 15 F.R. 9029, 64 Stat. A454, set out as a note preceding section 1 of Title 50, App., War and National Defense], or until such earlier date as the Congress by concurrent resolution declares that it is no longer necessary to exercise the powers continued in force and effect by this Act, notwithstanding

any limitation, by reference to war or threatened war, of the time during or for which the authorizations or liabilities thereunder may be exercised or imposed."

PRIOR CONTINUATIONS

Provisions of this section were previously extended to July 1, 1953 by act July 3, 1952, ch. 570, § 1(a)(26), 66 Stat. 332, as amended by act Mar. 31, 1953, ch. 13, § 1, 67 Stat. 18.

REPEAL OF PRIOR ACTS CONTINUING EFFECTIVENESS OF SECTION

Section 6 of act July 3, 1952, repealed act Apr. 14, 1952, ch. 204, 66 Stat. 54, as amended by acts May 28, 1952, ch. 339, 66 Stat. 96; June 14, 1952, ch. 437, 66 Stat. 137; June 30, 1952, ch. 526, 66 Stat. 296, which continued effectiveness of section until July 3, 1952. This repeal shall take effect as of June 16, 1952, by section 7 of act July 3, 1952.

§ 1021. Unlawful acts and penalties

(a) Intentional violations of chapter

Any person who knowingly and willfully violates any provision of this chapter, or any rule, regulation, requirement, or order thereunder, or any term or condition of any permit, for which no penalty is otherwise provided, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $100 for the first offense and not more than $500 for any subsequent offense. Each day of such violation shall constitute a separate offense.

(b) Rebates and concessions

Any freight forwarder or any officer, agent, employee, or representative thereof who, by any device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person to obtain service subject to this chapter at less than the rates or charges lawfully in effect, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500 for the first offense and not more than $2,000 for any subsequent offense.

(c) Solicitation of rebates or concessions

Any person who shall by any device or means, whether with or without the consent or connivance of any freight forwarder or its officer, agent, employee, or representative, knowingly and willfully obtain service subject to this chapter at less than the rates or charges lawfully in effect, or shall knowingly and willfully, directly or indirectly, by false claim, false billing, false representation, or other device or means, obtain or attempt to obtain any allowance, refund, or repayment in connection with or growing out of such service, whether with or without the consent or connivance of such forwarder or its officer, agent, employee, or representative, whereby the compensation of such forwarder for such service, either before or after payment, shall be less than the rates or charges lawfully in effect, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500 for the first offense and not more than $2,000 for any subsequent offense.

(d) Refusal to comply with commission

Any freight forwarder, or any officer, agent, employee, or representative thereof, who shall willfully fail or refuse to make a report to the Commission as required under this chapter, or to make specific and full, true, and correct answer to any question within thirty days from the time it is lawfully required by the Commission so to do, or to keep accounts, records, and memoranda in the form and manner prescribed by the Commission, or shall knowingly and willfully falsify, destroy, mutilate, or alter any such report, account, record, or memorandum, or shall knowingly and willfully file with the Commission any false report, account, record, or memorandum, or shall knowingly and willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of the freight forwarder, or shall knowingly and willfully keep any accounts, records, or memoranda contrary to the rules, regulations, or orders of the Commission with respect thereto, shall be guilty of a misdemeanor and upon conviction thereof shall be subject for each offense to a fine of not more than $5,000. As used in this subsection, the word "keep" shall be construed to mean make, prepare, or compile, as well as retain.

(e) Concealment of information by commission agents

Any special agent, accountant, or examiner of the Commission who knowingly and willfully divulges any fact or information which may come to his knowledge during the course of any examination or inspection made under authority of this chapter, except as he may be directed by the Commission or by a court or judge thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not more than $500 or imprisonment for not exceeding six months, or both.

(f) Release of information improperly

It shall be unlawful for any freight forwarder or any officer, agent, employee, or representative of such forwarder, or for any other person authorized by such forwarder or any such person to receive information, knowingly and willfully to disclose to, or permit to be acquired by, any person other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such forwarder in service subject to this chapter, which information may be or is used to the detriment or prejudice of such shipper or consignee, or which may or does improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person to solicit or knowingly and willfully receive any such information which may be or is so used. Any person violating any provisions of this subsection shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $100 for the first offense and not more than $500 for any subsequent offense. Each day of such violation shall constitute a separate offense. Nothing in this chapter shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any court, or to any officer or agent of the Government of the United States or of any State, Territory, or District thereof, in the exercise of his powers, or to

any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crimes, or to another freight forwarder, or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such forwarders.

(g) Application of other provisions

The provisions of sections 41 to 43 of this title shall apply to service subject to this chapter, and to freight forwarders and shippers in respect to such service, and shall apply for purposes of enforcement of this chapter; and the provisions of said sections shall be considered to apply in addition to, and not to the exclusion of, the provisions of this chapter.

(Feb. 4, 1887, ch. 104, pt. IV, § 421, as added May 16, 1942, ch. 318, § 1, 56 Stat. 298.)

§ 1022. Separability of provisions

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the other provisions of this chapter, and the application of such provision to any other person or circumstances, shall not be affected thereby.

(Feb. 4, 1887, ch. 104, pt. IV, § 422, as added May 16, 1942, ch. 318, § 1, 56 Stat. 300.)

CHAPTER 14—FEDERAL AID FOR PUBLIC AIRPORT DEVELOPMENT

§§ 1101 to 1103. Repealed. Pub. L. 91-258, title I, § 52(a), May 21, 1970, 84 Stat. 235

Section 1101, acts May 13, 1946, ch. 251, § 2, 60 Stat. 170; Apr. 17, 1948, ch. 192, § 1(1), 62 Stat. 173; Aug. 3, 1955, ch. 494, § 1, 69 Stat. 441; Aug. 23, 1958, Pub. L. 85-726, title XIV, § 1402(b)(1), 72 Stat. 806; June 29, 1959, Pub. L. 86-72, § 2(a), 73 Stat. 155; Sept. 20, 1961, Pub. L. 87-255, § 8(a), 75 Stat. 526; Mar. 11, 1964, Pub. L. 88-280, § 1, 78 Stat. 158, defined for purposes of Federal Airport Act the terms: (1) "Administrator", (2) "airport", (3) "airport development", (4) "airport hazard", (5) "project", (6) "project costs", (7) "public agency", (8) "public airport", (9) "sponsor", (10) "United States share", (11) "military and naval aircraft", and (12) "State". See section 1711 of this title.

Section 1102, acts May 13, 1946, ch. 251, § 3, 60 Stat. 171; Apr. 17, 1948, ch. 192, § 1(1), 62 Stat. 173; Mar. 18, 1950, ch. 72, § 7, 64 Stat. 28; Aug. 3, 1955, ch. 494, § 2, 69 Stat. 441; Aug. 23, 1958, Pub. L. 85-726, title XIV, § 1402(b)(2), 72 Stat. 807; June 29, 1959, Pub. L. 86-72, § 2(b), 73 Stat. 155; Sept. 20, 1961, Pub. L. 87-255, § 8(b), 75 Stat. 526, Mar. 11, 1964, Pub. L. 88-280, § 2, 78 Stat. 159, provided for formulation of national airport plan and consultation with Department of Defense and the Secretary of Interior. See section 1712 of this title.

Section 1103, acts May 13, 1946, ch. 251, § 4, 60 Stat. 171; Aug. 3, 1955, ch. 494, § 3, 69 Stat. 441; Aug. 23, 1958, Pub. L. 85-726, title XIV, § 1402(b)(3), 72 Stat. 807; Sept. 20, 1961, Pub. L. 87-255, § 1, 75 Stat. 523; Mar. 11, 1964, Pub. L. 88-280, § 3, 78 Stat. 159, provided for money grants to airport development sponsors and announcement and revision of program. See sections 1713 and 1714 of this title.

EFFECTIVE DATE OF REPEAL

Section 52(a) of Pub. L. 91-258 provided in part for repeal of sections 1101 to 1103, 1104 to 1106, and 1107a to 1120 of this title as of the close of June 30, 1970.

§ 1103a. Transferred

CODIFICATION

Section, Pub. L. 86-154, Aug. 11, 1959, 73 Stat. 333, which related to interstate compacts for airport facilities, was transferred to section 1743 of this title.

§§ 1104 to 1106. Repealed. Pub. L. 91-258, title I, § 52(a), May 21, 1970, 84 Stat. 235

Section 1104, acts May 13, 1946, ch. 251, § 5, 60 Stat. 172; Oct. 26, 1949, ch. 751, 63 Stat. 925; Sept. 27, 1950, ch. 1055, 64 Stat. 1071; Aug. 3, 1955, ch. 494, § 4, 69 Stat. 441; June 29, 1959, Pub. L. 86-72, §§ 1, 2(c), 73 Stat. 155; Sept. 20, 1961, Pub. L. 87-255, § 2, 75 Stat. 524; Mar. 11, 1964, Pub. L. 88-280, § 4, 78 Stat. 159; Oct. 13, 1966, Pub. L. 89-647, § 1, 80 Stat. 894, authorized appropriations for projects in the several States, Puerto Rico, and Virgin Islands for planning research, and administrative expenses.

Section 1105, acts May 13, 1946, ch. 251, § 6, 60 Stat. 173; Oct. 25, 1949, ch. 724, § 1, 63 Stat. 903; Aug. 3, 1955, ch. 494, § 5, 69 Stat. 442; Aug. 23, 1958, Pub. L. 85-726, title XIV, § 1402(b)(2), 72 Stat. 807; Sept. 21, 1959, Pub. L. 86-295, 73 Stat. 572; Sept. 20, 1961, Pub. L. 87-255, § 3, 75 Stat. 524; Mar. 11, 1964, Pub. L. 88-280, § 5, 78 Stat. 160; Oct. 13, 1966, Pub. L. 89-647, § 2, 80 Stat. 894, provided for apportionment of funds among projects in the several States, Puerto Rico, Virgin Islands, and Guam, defined "population" and "area", and provided for creation and use of discretionary funds, and redistribution of unexpended funds. See section 1715 of this title.

Section 1106, acts May 13, 1946, ch. 251, § 7, 60 Stat. 174; Apr. 17, 1948, ch. 192, § 1(1), 62 Stat. 173; June 29, 1959, Pub. L. 86-72, § 2(d), 73 Stat. 155; Sept. 20, 1961, Pub. L. 87-255, § 8(c), 75 Stat. 526; Mar. 11, 1964, Pub. L. 88-280, § 6, 78 Stat. 160, related to availability of funds for advance planning and engineering and projects in Puerto Rico and Virgin Islands.

EFFECTIVE DATE OF REPEAL

Sections repealed as of the close of June 30, 1970, see section 52(a) of Pub. L. 91-258, set out in part as an Effective Date of Repeal note under former sections 1101 to 1103 of this title.

§ 1107. Repealed. Aug. 3, 1955, ch. 494, § 6, 69 Stat. 443

Section, acts May 13, 1946, ch. 251, § 8, 60 Stat. 174; Feb. 9, 1950, ch. 5, 64 Stat. 4, required the Department of Commerce to submit to Congress each year a list of the projects for development of class 4 and larger airports.

§§ 1107a to 1120. Repealed. Pub. L. 91-258, title I, § 52(a), May 21, 1970, 84 Stat. 235

Section 1107a, act May 13, 1946, ch. 251, § 8, as added Mar. 11, 1964, Pub. L. 88-280, § 7, 78 Stat. 160, provided for advance planning and engineering grants and defined "airport layout plan". See sections 1711 and 1713 of this title.

Section 1108, acts May 13, 1946, ch. 51, § 9, 60 Stat. 174; Apr. 17, 1948, ch. 192, § 1(1), 62 Stat. 173; Mar. 18, 1950, ch. 72, § 6, 64 Stat. 28; Aug. 3, 1955, ch. 494, § 7, 69 Stat. 443; Aug. 23, 1958, Pub. L. 85-726, title XIV, § 1402(b)(3), 72 Stat. 807; June 29, 1959, Pub. L. 86-72, § 2(e), 73 Stat. 155; Sept. 20, 1961, Pub. L. 87-255, §§ 4, 8(d), 75 Stat. 525, 527; Mar. 11, 1964, Pub. L. 88-280, § 8, 78 Stat. 160, related to advance planning and engineering proposals and project applications and provided in subsec. (a) for submission, (b) public agencies subject to State law, (c) Federal agencies, (d) approval, and (e) hearings. See section 1716 of this title.

Section 1109, acts May 13, 1946, ch. 251, § 10, 60 Stat. 175; Apr. 17, 1948, ch. 192, § 1(2), 62 Stat. 173; Aug. 15, 1949, ch. 426, §§ 1, 2, 63 Stat. 605; Jan. 9, 1951, ch. 1214, 64 Stat. 1237; June 29, 1959, Pub. L. 86-72, § 2(f), 73 Stat. 155; Sept. 20, 1961, Pub. L. 87-255, §§ 5, 8(e), 75 Stat. 526, 527; Mar. 11, 1964, Pub. L. 88-280, § 9, 78

Stat. 161, related to United States share of project costs and provided in subsec. (a) percentage limitation, (b) projects in public land States, (c) projects in Virgin Islands, and (d) landing aids. See section 1717 of this title.

Section 1110, acts May 13, 1946, ch. 251, § 11, 60 Stat. 176; Sept. 20, 1961, Pub. L. 87-255, § 6, 75 Stat. 526; Mar. 11, 1964, Pub. L. 88-280, § 10, 78 Stat. 161, related to project sponsorship, requirements, contracts between Administrators and public agencies, and relief of sponsors. See section 1718 of this title.

Section 1111, acts May 13, 1946, ch. 251, § 12, 60 Stat. 177; July 25, 1949, ch. 359, 63 Stat. 478; Aug. 3, 1955, ch. 494, § 8, 69 Stat. 443; Aug. 23, 1958, Pub. L. 85-726, title XIV, § 1402(b)(3), 72 Stat. 807; Mar. 11, 1964, Pub. L. 88-280, § 11, 78 Stat. 161, related to grant agreements, offer of terms and conditions, and acceptance. See section 1719 of this title.

Section 1112, acts May 13, 1946, ch. 251, § 13, 60 Stat. 177; June 29, 1959, Pub. L. 86-72, § 3, 73 Stat. 155; Sept. 20, 1961, Pub. L. 87-255, § 7, 75 Stat. 526, provided for allowable project costs, regulations, and audit of costs. See section 1720 of this title.

Section 1113, acts May 13, 1946, ch. 251, § 14, 60 Stat. 178; Aug. 12, 1949, ch. 423, 63 Stat. 603; Mar. 11, 1964, Pub. L. 88-280, § 12, 78 Stat. 162, related to payments under grant agreements, advance payments, percentage, and recovery of excess and advance payments. See section 1721 of this title.

Section 1114, acts May 13, 1946, ch. 251, § 15, 60 Stat. 178; July 26, 1949, ch. 363, 63 Stat. 480; July 2, 1964, Pub. L. 88-349, § 2, 78 Stat. 239, related to performance of construction work, regulations of Administrator, wage rates, and employment requirements. See section 1722 of this title.

Section 1115, act May 13, 1946, ch. 251, § 16, 60 Stat. 179, related to requests for use of Government-owned lands, the Administrator's determination, and execution of conveyance. See section 1723 of this title.

Section 1116, acts May 13, 1946, ch. 251, § 17, 60 Stat. 179; June 29, 1948, ch. 738, 62 Stat. 1111; July 8, 1953, ch. 181, § 1, 67 Stat. 140; Aug. 23, 1958, Pub. L. 85-726, title XIV, § 1402(b)(2), 72 Stat. 807, related to reimbursement for damage by Federal agencies to public airports, and provided in subsec. (a) for submission and determination of claims, subsec. (b) certification of claims to Congress, cost in excess of certification, contractual obligation of Government, subsec. (c) appropriations, limitations on payments by Administrator, disposition of excess, subsec. (d) time limitation on reimbursement requests, and (e) time limitation on making of certifications.

Section 1117, act May 13, 1946, ch. 251, § 18, 60 Stat. 180, provided for reports to Congress. See section 1724 of this title.

Section 1118, act May 13, 1946, ch. 251, § 19, 60 Stat. 180, provided penalties for false statements, representations, or reports. See section 1725 of this title.

Section 1119, act May 13, 1946, ch. 251, § 20, 60 Stat. 180, provided that existing airport programs were unaffected by this chapter.

Section 1120, act May 13, 1946, ch. 251, § 21, as added Mar. 11, 1964, Pub. L. 88-280, § 13, 78 Stat. 162, related to recordkeeping, contents of records, and access of officials to them. See section 1726 of this title.

EFFECTIVE DATE OF REPEAL

Sections repealed as of the close of June 30, 1970, see section 52(a) of Pub. L. 91-258, set out as an Effective Date of Repeal note under former sections 1101 to 1103 of this title.

CHAPTER 15—INTERNATIONAL AVIATION FACILITIES

Sec.
1151. Definitions.
1152. Establishment and operation of airport and airway property in foreign territories.
1153. Training of foreign nationals in aeronautical and related subjects.
1154. Acceptance of foreign funds for facilities supplied or services rendered to foreign governments or international organizations.
1155. Transference of airport or airway property to foreign governments or international organizations.
1156. Facilities, service, and property provided the Canal Zone and the Republic of Panama.
(a) Approval.
(b) Consistency with treaties, conventions, and agreements.
(c) Transfer of property from Department of Defense.
(d) Authority.
1157. Transfer of certain property from the Department of Defense to the Secretary of Transportation or the Secretary of Commerce.
(a) Airport and airway property.
(b) Meteorological property.
(c) Status of certain transferred property.
1158. Repossession of property transferred under sections 1156 and 1157 of this title.
1159. Powers.
(a) Administration; penalties.
(b) Secretary of Commerce.
(c) Disposition of receipts.
(d) Leases or contracts unaffected by section 5 of title 41.
1159a. International user charges; survey and report of discriminatory practices; negotiations by relevant Federal departments and agencies for reduction or elimination; payment of compensatory charges; procedure for imposition and accrual.
1159b. Discriminatory and unfair competitive practices.
(a) Review and remedial activities by relevant Federal departments and agencies.
(b) Requests of Congress by relevant Federal departments and agencies for additional remedial legislation.
(c) Annual report to Congress by Civil Aeronautics Board of remedial activities; information for preparation of report.
1160. Utilization of facilities and services of other Government agencies.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 40 section 474.

§ 1151. Definitions

For the purposes of this chapter:

(1) The term "airport property" means any property, real or personal, or any interest therein, used or useful, directly or indirectly, in connection with the administration, operation, or maintenance of an airport, including but not limited to (1) land; (2) runways, strips, taxiways, and parking aprons; (3) buildings, structures, improvements, and facilities, whether or not used in connection with the landing and take-off of aircraft; and (4) equipment (including parts and components thereof), furniture, vehicles, and supplies.

(2) The term "airway property" means any property, real or personal, or any interest therein, used or useful, directly or indirectly, in connection with the administration, operation, or maintenance of any ground installation, facility, or equipment (including parts and components thereof) necessary or desir-

able for the orderly and safe operation of air traffic, including but not limited to air navigation, air-traffic control, airway communications, and meteorological facilities.

(3) The term "foreign territory" means any area of land or water over which no nation or a nation other than the United States exercises the incidents of sovereignty (including territory of undetermined sovereignty and the high seas), any area of land or water temporarily under military occupation by the United States, and any area of land or water occupied or administered by the United States or any other nation under any international agreement.

(June 16, 1948, ch. 473, § 2, 62 Stat. 450; Aug. 23, 1958, Pub. L. 85-726, title XIV, § 1403, 72 Stat. 808.)

AMENDMENTS

1958—Pub. L. 85-726 eliminated cl. (1), which defined "Air Coordinating Committee", and redesignating cls. (2) to (4) as (1) to (3).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of this section effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85-726 qualified and took office (Oct. 31, 1958), see section 1505(2) of Pub. L. 85-726, set out as an Effective Date note under section 1301 of this title.

SHORT TITLE OF 1975 AMENDMENT

Pub. L. 93-623, § 1, Jan. 3, 1975, 88 Stat. 2102, provided that: "This Act [enacting sections 1159a, 1159b and 1517 of this title, and amending sections 1151 note, 1160, 1373, 1376, 1377, and 1472 of this title and section 2122 of Title 22, Foreign Relations and Intercourse] may be cited as the 'International Air Transportation Fair Competitive Practices Act of 1974'."

SHORT TITLE

Section 1 of act June 16, 1948, provided that: "This Act [enacting this chapter] may be cited as the 'International Aviation Facilities Act'."

AUTHORIZATION OF APPROPRIATIONS

Section 13, formerly 12, of act June 16, 1948, as renumbered by Pub. L. 93-623, § 3, Jan. 3, 1975, 88 Stat. 2103, provided that: "There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act [this chapter]."

EXECUTIVE ORDER NO. 9781

Ex. Ord. No. 9781, eff. Sept. 19, 1946, 11 F.R. 10645, as amended by Ex. Ord. No. 10360, eff. June 11, 1952, 17 F.R. 5337, which established the Air Coordinating Committee, was superseded by Ex. Ord. No. 10655, eff. Jan. 30, 1956, 21 F.R. 665.

EXECUTIVE ORDER NO. 10655

Ex. Ord. No. 10655, eff. Jan. 30, 1956, 21 F.R. 665, as amended by Ex. Ord. No. 10796, eff. Dec. 24, 1958, 23 F.R. 10391, which related to the Air Coordinating Committee, was revoked by Ex. Ord. No. 10883, eff. Aug. 11, 1960, 25 F.R. 7710, set out as a note below.

EX. ORD. NO. 10883. TERMINATION OF AIR COORDINATING COMMITTEE

Ex. Ord. No. 10883, eff. Aug. 11, 1960, 25 F.R. 7710, provided:

By virtue of the authority vested in me as President of the United States, it is ordered as follows:

1. The Air Coordinating Committee is hereby terminated.

2. Executive Order No. 10655 of January 28, 1956, relating to the Air Coordinating Committee, and Executive Order No. 10796 of December 24, 1958, amending that order, are hereby revoked.

3. The Administrator of the Federal Aviation Agency shall make such provisions as may be necessary for winding up any outstanding affairs of the Air Coordinating Committee, and such provisions may be made at any time after the date of this order.

4. Except as provided in paragraph 3, this order shall become effective on the sixtieth day following the date thereof.

DWIGHT D. EISENHOWER.

§ 1152. Establishment and operation of airport and airway property in foreign territories

Subject to concurrence of the Secretary of State, and with due regard for the objectives of the International Civil Aviation Organization, the Secretary of Transportation and the Secretary of Commerce, within their respective fields, are authorized, by contract or otherwise, to acquire, establish, and construct airport property and airway property in foreign territory: *Provided, however,* That, except in the case of airport property transferred under section 1157 of this title, no airport (as defined in section 401 of this title) may be acquired, established, or constructed under authority of this section unless funds for such purpose have been specifically appropriated by the Congress.

(June 16, 1948, ch. 473, § 3, 62 Stat. 451; Aug. 23, 1958, Pub. L. 85-726, title XIV, § 1403, 72 Stat. 808; 1965 Reorg. Plan No. 2, §§ 1, 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; Oct. 15, 1966, Pub. L. 89-670, § 6(c)(1), 80 Stat. 938.)

REFERENCES IN TEXT

Section 401 of this title, referred to in text, was repealed by Pub. L. 85-726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806, and is now covered by section 1301 of this title.

AMENDMENTS

1958—Pub. L. 85-726 substituted "Administrator of the Federal Aviation Agency" for "Administrator of Civil Aeronautics", and eliminated provisions which required consultation with the Air Coordinating Committee.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of this section effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85-726 qualified and took office (Oct. 31, 1958), see section 1505(2) of Pub. L. 85-726, set out as an Effective Date note under section 1301 of this title.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" has been substituted for "Administrator of the Federal Aviation Agency" and "Administrator" pursuant to sections 3(e) and 6(c)(1) of Pub. L. 89-670, which created the Department of Transportation and transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator and other offices and officers thereof to the Secretary of Transportation. See sections 1652(e) and 1655(c)(1) of this title.

The Weather Bureau in the Department of Commerce was consolidated with the Coast and Geodetic Survey to form a new agency in the Department to be known as the Environmental Science Services Administration, and the office of Chief of the Weather Bureau was abolished, by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization

and Employees. The Reorg. Plan also transferred to the Secretary of Commerce all functions of the Bureau and the Chief of the Bureau.

Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5, abolished the Environmental Science Services Administration, including the offices of Administrator and Deputy Administrator, and established the National Oceanic and Atmospheric Administration within the Department of Commerce. By Department Organization Order 25-5A, republished 39 F.R. 27486, July 29, 1974, the Secretary of Commerce transferred to the National Oceanic and Atmospheric Administration a number of functions vested in him, including his functions under this chapter of the Code. By order of the Acting Associate Administrator, 35 F.R. 19249, Dec. 19, 1970, the following organizational names appearing in chapter IX of subtitle B of Title 15, Code of Federal Regulations, relating to the Administration, were changed: Environmental Science Services Administration to National Oceanic and Atmospheric Administration (ESSA to NOAA); Coast and Geodetic Survey to National Ocean Survey, and Weather Bureau to National Weather Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1156 of this title.

§ 1153. Training of foreign nationals in aeronautical and related subjects

Subject to the concurrence of the Secretary of State, the Secretary of Transportation and the Secretary of Commerce, within their respective fields, are authorized within or outside the United States to train foreign nationals directly, or in conjunction with any other United States Government agency, or through any United States public or private agency (including any State or municipal educational institution), or through any international organization, in aeronautical and related subjects essential to the orderly and safe operation of civil aircraft.

(June 16, 1948, ch. 473, § 4, 62 Stat. 451; 1965 Reorg. Plan No. 2, §§ 1, 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; Oct. 15, 1966, Pub. L. 89-670, § 6(c)(1), 80 Stat. 938.)

TRANSFER OF FUNCTIONS

"Secretary of Transportation" has been substituted for "Administrator of the Federal Aviation Agency" and "Administrator" pursuant to sections 3(e) and 6(c)(1) of Pub. L. 89-670, which created the Department of Transportation and transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator and other offices and officers thereof to the Secretary of Transportation. See sections 1652(e) and 1655(c)(1) of this title.

The Office of Chief of the Weather Bureau was abolished and his functions transferred to the Secretary of Commerce by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. For further details, see Transfer of Functions note under section 1152 of this title.

§ 1154. Acceptance of foreign funds for facilities supplied or services rendered to foreign governments or international organizations

The Secretary of Transportation and the Secretary of Commerce, respectively, are authorized to accept, on behalf of the United States, funds from any foreign government or from any international organization as payment for any facilities supplied or services performed for such government or international organization by the Secretary of Transportation or the Secretary of Commerce, either directly or indirectly, under authority of this chapter or the Civil Aeronautics Act of 1938, as amended, including the operation of airport property and airway property in such countries, the training of foreign nationals, the rendering of technical assistance and advice to such countries, and the performance of other similar services. Funds so received may be credited (A) to appropriations current at the time the expenditures are to be or have been paid, (B) to appropriations current at the time such amounts are received, or (C) in part as provided under clause (A) and in part as provided under clause (B).

(June 16, 1948, ch. 473, § 5, 62 Stat. 451; 1965 Reorg. Plan No. 2, §§ 1, 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; Oct. 15, 1966, Pub. L. 89-670, § 6(c)(1), 80 Stat. 938.)

REFERENCES IN TEXT

The Civil Aeronautics Act of 1938, as amended, referred to in text, is act June 23, 1938, ch. 601, 52 Stat. 973, as amended, which was classified principally to chapter 9 (§ 401 et seq.) of this title and repealed by Pub. L. 85-726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806. For complete classification of this Act to the Code, see Tables volume.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" has been substituted for "Administrator of the Federal Aviation Agency" and "Administrator" pursuant to sections 3(e) and 6(c)(1) of Pub. L. 89-670, which created the Department of Transportation and transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator and other offices and officers thereof to the Secretary of Transportation. See sections 1652(e) and 1655(c)(1) of this title.

The Office of Chief of the Weather Bureau was abolished and his functions transferred to the Secretary of Commerce by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. For further details, see Transfer of Functions note under section 1152 of this title.

§ 1155. Transference of airport or airway property to foreign governments or international organizations

The Secretary of Transportation or the Secretary of Commerce, as the case may be, upon request of the foreign government involved or of any international organization, may transfer any airport property or airway property operated and maintained by him within foreign territory, pursuant to the provisions of this chapter, to the foreign government involved or to any international organization. The Secretary of Transportation or the Secretary of Commerce, as the case may be, is authorized to make such transfer upon such terms and conditions as he deems proper, including provision for receiving, on behalf of the United States, such payment or other consideration for the property so transferred as may be agreed upon through negotiations with the foreign government or international organization involved.

(June 14, 1948, ch. 473, § 6, 62 Stat. 452; Aug. 23, 1958, Pub. L. 85-726, title XIV, § 1403, 72 Stat. 808; 1965 Reorg. Plan No. 2, §§ 1, 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; Oct. 15, 1966, Pub. L. 89-670, § 6(c)(1), 80 Stat. 938.)

AMENDMENTS

1958—Pub. L. 85-726 eliminated provisions which related to unanimous approval of the Air Coordinating Committee.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of this section effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85-726 qualified and took office (Oct. 31, 1958), see section 1505(2) of Pub. L. 85-726, set out as an Effective Date note under section 1301 of this title.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" has been substituted for "Administrator of the Federal Aviation Agency" and "Administrator" pursuant to sections 3(e) and 6(c)(1) of Pub. L. 89-670, which created the Department of Transportation and transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator and other offices and officers thereof to the Secretary of Transportation. See sections 1652(e) and 1655(c)(1) of this title.

The Office of Chief of the Weather Bureau was abolished and his functions transferred to the Secretary of Commerce by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. For further details, see Transfer of Functions note under section 1152 of this title.

§ 1156. Facilities, service, and property provided the Canal Zone and the Republic of Panama

(a) Approval

Subject to the approval of the Secretary of Defense, the Secretary of Transportation is authorized to provide air navigation, communications, and air traffic control facilities and services in the Canal Zone and the Republic of Panama and to do all things necessary in connection with the operation and maintenance thereof.

(b) Consistency with treaties, conventions, and agreements

In exercising and performing his powers and duties under this section, the Secretary of Transportation shall do so consistently with any obligation assumed by the United States in any treaty, convention, or agreement that may be in force between the United States and the Republic of Panama.

(c) Transfer of property from Department of Defense

Any department of the Department of Defense is authorized in its discretion to transfer without charge therefor to the Secretary of Transportation any airport property or airway property or other real or personal property which (1) is located in the Canal Zone or the Republic of Panama, and (2) is determined by the Secretary of Transportation to be, or likely to become, useful in carrying out the purposes of this chapter.

(d) Authority

The authority conferred by this section may be exercised without regard to sections 1152 and 1157(a) of this title.

(June 16, 1948, ch. 473, § 7, 62 Stat. 452; Aug. 10, 1949, ch. 412, § 12(a), 63 Stat. 591; Oct. 15, 1966, Pub. L. 89-670, § 6(c)(1), 80 Stat. 938.)

CHANGE OF NAME

The Department of Defense was substituted for the National Military Establishment pursuant to act Aug. 10, 1949.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" has been substituted for "Administrator of the Federal Aviation Agency" and "Administrator" pursuant to sections 3(e) and 6(c)(1) of Pub. L. 89-670, which created the Department of Transportation and transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator and other offices and officers thereof to the Secretary of Transportation. See sections 1652(e) and 1655(c)(1) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1158 of this title.

§ 1157. Transfer of certain property from the Department of Defense to the Secretary of Transportation or the Secretary of Commerce

(a) Airport and airway property

When considered consistent with the needs of national defense, and subject to such conditions, if any, as may be agreed upon in specific cases between the parties, any department of the Department of Defense is authorized to transfer at its discretion to the Secretary of Transportation, without charge therefor, airport property and airway property, exclusive of meteorological facilities, installed by or in the possession of such department in territory (including Alaska) outside the continental limits of the United States, which such department has found to be no longer required exclusively for military purposes and which in the opinion of the Secretary of Transportation are, or are likely to become, necessary for carrying out the purposes of this chapter.

(b) Meteorological property

When considered consistent with the needs of national defense, and subject to such conditions, if any, as may be agreed upon in specific cases between the parties, any department of the Department of Defense is authorized to transfer at its discretion to the Secretary of Commerce without charge therefor, meteorological facilities installed by or in the possession of such department in territory (including Alaska) outside the continental limits of the United States, which such department has found to be no longer required exclusively for military purposes, and which, in the opinion of the Secretary of Commerce are, or are likely to become, necessary for carrying out the purposes of this chapter.

(c) Status of certain transferred property

All property transferred to the Department of Commerce under the provisions of Executive Order 9709, dated March 29, 1946, and Executive Order 9797, dated November 6, 1946, and which is in the possession of the Department of Commerce on June 16, 1948, shall be considered as property transferred pursuant to this section.

(June 16, 1948, ch. 473, § 8, 62 Stat. 452; Aug. 10, 1949, ch. 412, § 12(a), 63 Stat. 591; Aug. 23, 1958, Pub. L. 85-726, title XIV, § 1403, 72 Stat. 808; 1965 Reorg. Plan No. 2, §§ 1, 2, eff. July 13,

1965, 30 F.R. 8819, 79 Stat. 1318; Oct. 15, 1966, Pub. L. 89-670, § 6(c)(1), 80 Stat. 938.)

AMENDMENTS

1958—Pub. L. 85-726 eliminated provisions in subsecs. (a) and (b) which required transfers of property to be made only after consultation with the Air Coordinating Committee.

CHANGE OF NAME

The Department of Defense was substituted for the National Military Establishment pursuant to act Aug. 10, 1949.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of this section effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85-726 qualified and took office (Oct. 31, 1958), see section 1505(2) of Pub. L. 85-726, set out as an Effective Date note under section 1301 of this title.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" has been substituted for "Administrator of the Federal Aviation Agency" and "Administrator" pursuant to sections 3(e) and 6(c)(1) of Pub. L. 89-670, which created the Department of Transportation and transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator and other offices and officers thereof to the Secretary of Transportation. See sections 1652(e) and 1655(c)(1) of this title.

The Office of Chief of the Weather Bureau was abolished and his functions transferred to the Secretary of Commerce by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. For further details, see Transfer of Functions note under section 1152 of this title.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959, upon issuance of Proc. No. 3269, eff. Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1152, 1156, 1158 of this title.

§ 1158. Repossession of property transferred under sections 1156 and 1157 of this title

When necessary to meet military requirements, as determined by the Secretary of the department which made the transfer, such department is authorized immediately to retake any property transferred under sections 1156 or 1157 of this title, together with any improvements or additions made thereto: *Provided*, That the Secretary of such department, upon the recommendation of the Secretary of Transportation or the Secretary of Commerce, as the case may be, is authorized in any case to waive any right or privilege conferred or reserved by this section. In the event property is retaken which incorporates improvements or additions not made at Government expense, reasonable compensation shall be paid to the person or persons who made such improvements or additions, or to their successors in interest. The Secretary of the department which made the transfer, or his duly authorized representative, shall determine, for purposes of this section, what is reasonable compensation for such improvements or additions.

(June 16, 1948, ch. 473, § 9, 62 Stat. 453; 1965 Reorg. Plan No. 2, §§ 1, 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; Oct. 15, 1966, Pub. L. 89-670, § 6(c)(1), 80 Stat. 938.)

TRANSFER OF FUNCTIONS

"Secretary of Transportation" has been substituted for "Administrator of the Federal Aviation Agency" and "Administrator" pursuant to sections 3(e) and 6(c)(1) of Pub. L. 89-670, which created the Department of Transportation and transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator and other offices and officers thereof to the Secretary of Transportation. See sections 1652(e), 1655(c)(1), and 1657 of this title.

The Office of Chief of the Weather Bureau was abolished and his functions transferred to the Secretary of Commerce by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. For further details, see Transfer of Functions note under section 1152 of this title.

§ 1159. Powers

(a) Administration; penalties

With regard to airport property and airway property in territory (including Alaska) outside the continental limits of the United States which he has acquired pursuant to this chapter or any other provision of law, the Secretary of Transportation is empowered and directed to do and perform, by contract or otherwise, all acts and things necessary or incident to their consolidation, operation, protection, maintenance, improvement, and administration, including but not limited to the power (1) to adapt, from time to time, such properties to the needs of civil aeronautics by construction, installation, reengineering, relocation, or otherwise; (2) to make and amend such reasonable rules and regulations as he may deem necessary to the proper exercise of the powers granted by this section; (3) to lease under such conditions as he may deem proper and for such periods as may be desirable (not to exceed twenty years) space or property for purposes essential or appropriate to their consolidation, operation, protection, and administration under this chapter; (4) to contract for, or to provide directly for, the sale of fuel, oil, equipment, food and supplies, hotel accommodations, and other facilities and services necessary or desirable for the operation and administration of such properties; (5) to make just and reasonable charges for aeronautical services (including but not limited to landing fees and fees for the use of communication services); and (6) to acquire, by purchase or otherwise, real or personal property, or interests therein, which he may consider necessary for the purposes of this section. Any person who knowingly and willfully violates any rule or regulation issued by the Secretary of Transportation under clause (2) of this section, if such violation is committed in any area under the civil jurisdiction of the United States, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500 or to imprisonment not exceeding six months, or to both such fine and imprisonment.

(b) Secretary of Commerce

With regard to meteorological facilities in territory (including Alaska) outside the continen-

tal limits of the United States which he has acquired pursuant to this chapter or any other provision of law, the Secretary of Commerce is vested with all powers to consolidate, operate, protect, maintain, improve, and administer granted the Secretary of Transportation by subsection (a) of this section with respect to facilities the latter has acquired.

(c) Disposition of receipts

All funds received under this section, as a result of direct sale or charge by the Secretary of Transportation or the Secretary of Commerce and which, in the judgment of the Secretary of Transportation or the Secretary of Commerce, as the case may be, are equivalent to the cost, including handling charges, of the fuel, oil, equipment, food, supplies, services, shelter, or other assistance or services sold or furnished shall be credited to the appropriation from which the cost thereof was paid, and the balance, if any, shall be credited to miscellaneous receipts.

(d) Leases or contracts unaffected by section 5 of title 41

The provisions of section 5 of title 41, shall not apply to any of the leases or contracts made by the Secretary of Transportation or the Secretary of Commerce pursuant to the provisions of this chapter.

(June 16, 1948, ch. 473, § 10, 62 Stat. 453; 1965 Reorg. Plan No. 2, §§ 1, 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; Oct. 15, 1966, Pub. L. 89-670, § 6(c)(1), 80 Stat. 938.)

TRANSFER OF FUNCTIONS

"Secretary of Transportation" has been substituted for "Administrator of the Federal Aviation Agency" and "Administrator" pursuant to sections 3(e) and 6(c)(1) of Pub. L. 89-670, which created the Department of Transportation and transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator and other offices and officers thereof to the Secretary of Transportation. See sections 1652(e) and 1655(c)(1) of this title.

The Office of Chief of the Weather Bureau was abolished and his functions transferred to the Secretary of Commerce by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. For further details, see Transfer of Functions note under section 1152 of this title.

ADMISSION OF ALASKA AS STATE

Admission of Alaska into the Union was accomplished Jan. 3, 1959 upon issuance of Proc. No. 3269, eff. Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

ANNETTE ISLAND AIRPORT, ALASKA; RENEWAL OF LEASE

Act May 9, 1956, ch. 241, 70 Stat. 146, provided: "That the Congress of the United States hereby approves the extension, from year to year, until June 30, 1999, of a lease of certain land comprising part of Annette Island, Alaska, for use by the Civil Aeronautics Administration [now the Federal Aviation Administration] as an airport, entered into by the United States of America and the Council of the Annette Island Reserve on December 13, 1948, section 5 of which lease provides that no renewal thereof shall extend beyond June 30, 1959, unless approved by Congress."

§ 1159a. International user charges; survey and report of discriminatory practices; negotiations by relevant Federal departments and agencies for reduction or elimination; payment of compensatory charges; procedure for imposition and accrual

The Secretary of Transportation shall survey the charges made to air carriers by foreign governments or other foreign entities for the use of airport property or airway property in foreign air transportation. If the Secretary of Transportation determines at any time that such charges unreasonably exceed comparable charges for furnishing such airport property or airway property in the United States or are otherwise discriminatory, he shall submit a report on such cases promptly to the Secretary of State and the Civil Aeronautics Board, and the Secretary of State, in collaboration with the Civil Aeronautics Board, shall promptly undertake negotiations with the foreign country involved to reduce such charges or eliminate such discriminations. If within a reasonable period such charges are not reduced or such discriminations eliminated through negotiations, the Secretary of State shall promptly report such instances to the Secretary of Transportation who shall determine compensating charges equal to such excessive or discriminatory charges. Such compensating charges shall, with the approval of the Secretary of State, be imposed on the foreign air carrier or carriers of the country concerned by the Secretary of the Treasury as a condition to acceptance of the general declaration at the time of landing or takeoff of aircraft of such foreign air carrier or carriers. The amounts so collected shall accrue to an account established for that purpose by the Secretary of the Treasury. Payments shall be made from that account to air carriers in such amounts as shall be certified by the Secretary of Transportation in accordance with such regulations as he shall adopt to compensate such air carriers for excessive or discriminatory charges paid by them to the foreign countries involved.

(June 16, 1948, ch. 473, § 11, as added Jan. 3, 1975, Pub. L. 93-623, § 3, 88 Stat. 2103.)

§ 1159b. Discriminatory and unfair competitive practices

(a) Review and remedial activities by relevant Federal departments and agencies

United States air carriers operating in foreign air transportation perform services of vital importance to the foreign commerce of the United States including its balance of payments, to the Postal Service, and to the national defense. Such carriers have become subject to a variety of discriminatory and unfair competitive practices in their competition with foreign air carriers. The Department of State, the Department of the Treasury, the Department of Transportation, the Civil Aeronautics Board, and other departments or agencies, therefore, each shall keep under review, to the extent of their respective functions, all forms of discrimination or unfair competitive practices to which United States air carriers are subject in providing foreign air transportation services and each shall take all appropriate actions within its jurisdic-

tion to eliminate such forms of discrimination or unfair competitive practices found to exist.

(b) Requests of Congress by relevant Federal departments and agencies for additional remedial legislation

Each of these departments and agencies of Government shall request from Congress such additional legislation as may be deemed necessary at any time it is determined there is inadequate legal authority for dealing with any form of discrimination or unfair competitive practice found to exist.

(c) Annual report to Congress by Civil Aeronautics Board of remedial activities; information for preparation of report

The Civil Aeronautics Board shall report annually to Congress on the actions that have been taken under subsection (a) of this section and on the continuing program to eliminate discriminations and unfair competitive practices faced by United States carriers in foreign air transportation. The Secretaries of State, Treasury, and Transportation shall furnish to the Civil Aeronautics Board such information as may be necessary to prepare the report required by this subsection.

(Pub. L. 93-623, § 2, Jan. 3, 1975, 88 Stat. 2102.)

CODIFICATION

Section was enacted as part of Pub. L. 93-623, known as the International Air Transportation Fair Competitive Practices Act of 1974, and not as part of act June 16, 1948, ch. 473, 62 Stat. 450, known as the International Aviation Facilities Act, which comprises this chapter.

§ 1160. Utilization of facilities and services of other Government agencies

The Secretary of Transportation and the Secretary of Commerce are authorized and directed, in carrying out the provisions of this chapter, insofar as they find it practicable, to arrange for the use of appropriate facilities or services of other United States Government agencies, and to reimburse any such agency for such service out of funds appropriated to the Department of Transportation or the Department of Commerce, as the case may be, to the end that personnel and facilities of existing United States Government agencies shall be utilized to the fullest possible advantage and not be unnecessarily duplicated. Any agency of the United States Government receiving any such request is authorized to furnish such facilities or to perform such services.

(June 16, 1948, ch. 473, § 12, formerly § 11, 62 Stat. 454; Aug. 23, 1958, Pub. L. 85-726, title XIV, § 1403, 72 Stat. 808; 1965 Reorg. Plan No. 2, §§ 1, 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; Oct. 15, 1966, Pub. L. 89-670, § 6(c)(1), 80 Stat. 937, renumbered Jan. 3, 1975, Pub. L. 93-623, § 3, 88 Stat. 2103.)

AMENDMENTS

1958—Pub. L. 85-726 substituted "Federal Aviation Agency" for "Civil Aeronautics Administration".

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of this section effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85-726 qualified and took office (Oct. 31, 1958), see section 1505(2) of Pub. L. 85-726, set out as an Effective Date note under section 1301 of this title.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" has been substituted for "Administrator of the Federal Aviation Agency" and "Department of Transportation" has been substituted for "Federal Aviation Agency" pursuant to sections 3(e) and 6(c)(1) of Pub. L. 89-670, which created the Department of Transportation and transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator and other offices and officers thereof to the Secretary of Transportation. See sections 1652(e) and 1655(c)(1) of this title.

The Office of Chief of the Weather Bureau was abolished and his functions transferred to the Secretary of Commerce by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. For further details, see Transfer of Functions note under section 1152 of this title.

CHAPTER 16—DEVELOPMENT OF COMMERCIAL AIRCRAFT

§§ 1181 to 1185. Omitted

CODIFICATION

Section 1181, act Sept. 30, 1950, ch. 1117, § 1, 64 Stat. 1090, which related to Congressional declaration of policy, was omitted as expired on Sept. 30, 1955 pursuant to the terms of section 7 of act Sept. 30, 1950.

Section 1182, act Sept. 30, 1950, ch. 1117, § 2, 64 Stat. 1091, which related to the powers and duties of the Secretary of Commerce, was omitted as expired on Sept. 30, 1955 pursuant to the terms of section 7 of act Sept. 30, 1950.

Section 1183, act Sept. 30, 1950, ch. 1117, § 3, 64 Stat. 1091, which related to employment of personnel, was omitted as expired on Sept. 30, 1955 pursuant to the terms of section 7 of act Sept. 30, 1950.

Section 1184, act Sept. 30, 1950, ch. 1117, § 4, 64 Stat. 1091, which related to definitions, was omitted as expired on Sept. 30, 1955 pursuant to section 7 of act Sept. 30, 1950.

Section 1185, act Sept. 30, 1950, 1950, ch. 1117, § 5, 64 Stat. 1092, which related to reports to Congress, was omitted as expired on Sept. 30, 1955 pursuant to section 7 of act Sept. 30, 1950.

AUTHORIZATION OF APPROPRIATIONS

Section 6 of act Sept. 30, 1950, authorized to be appropriated to the Department of Commerce not to exceed $12,500,000 to carry out the purposes of act Sept. 30, 1950.

CHAPTER 17—MEDALS OF HONOR FOR ACTS OF HEROISM

Sec.
1201. Awards for acts of heroism involving railroads or motor vehicles.
1202. Rosettes and ribbons; replacement.
1203. Authorization of appropriations.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1655 of this title.

§ 1201. Awards for acts of heroism involving railroads or motor vehicles

The President of the United States is authorized to cause to be prepared bronze medals of honor, with suitable emblematic devices, which shall be bestowed upon any persons who shall, by extreme daring, endanger their own lives in saving, or endeavoring to save, lives from any wreck, disaster, or grave accident, or in preventing or endeavoring to prevent such wreck, disas-

ter, or grave accident, upon any railroad within the United States engaged in interstate commerce or involving any motor vehicle on the public highways, roads, or streets of the United States: *Provided*, That no award of said medal shall be made to any person until sufficient evidence of his deserving shall have been furnished and placed on file, under such regulations as may be prescribed by the President of the United States.

(Feb. 23, 1905, ch. 744, § 1, 33 Stat. 743; June 13, 1957, Pub. L. 85-50, § 1(1), 71 Stat. 69.)

CODIFICATION

Section was formerly classified to section 44 of Title 45, Railroads.

AMENDMENTS

1957—Pub. L. 85-50 inserted the words "or involving any motor vehicle on the public highways, roads, or streets of the United States:".

SHORT TITLE

This section and sections 1202 and 1203 of this title, constitute an Act entitled "An Act to promote the security of travel upon railroads engaged in interstate commerce, and to encourage the saving of life", and are popularly known as the "Medals of Honor Act".

TRANSFER OF FUNCTIONS

All powers, duties, and functions of the Interstate Commerce Commission relating to medals for heroism under this section were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, § 6(e)(3), Oct. 15, 1966, 80 Stat. 939, which created the Department of Transportation. See section 1655(e)(3) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1202, 1203 of this title.

§ 1202. Rosettes and ribbons; replacement

The President of the United States is authorized to issue to any person to whom a medal of honor may be awarded under the provisions of section 1201 of this title a rosette or knot, to be worn in lieu of the medal, and a ribbon to be worn with the medal; said rosette or knot and ribbon to be each of a pattern to be prescribed by the President of the United States: *Provided*, That whenever a ribbon issued under the provisions of sections 1201 to 1203 of this title shall have been lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was issued, a new ribbon shall be issued to such person without charge therefor.

(Feb. 23, 1905, ch. 744, § 2, 33 Stat. 743.)

CODIFICATION

Section was formerly classified to section 45 of Title 45, Railroads.

TRANSFER OF FUNCTIONS

All powers, duties, and functions of the Interstate Commerce Commission relating to medals for heroism under this section were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, § 6(e)(3), Oct. 15, 1966, 80 Stat. 939, which created the Department of Transportation. See section 1655 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1203 of this title.

§ 1203. Authorization of appropriations

Appropriations for the Department of Transportation are made available for carrying out the provisions of sections 1201 and 1202 of this title.

(Feb. 23, 1905, ch. 744, § 3, 33 Stat. 743; June 13, 1957, Pub. L. 85-50, § 1(2), 71 Stat. 69; Oct. 15, 1966, Pub. L. 89-670, § 6(e)(3), 80 Stat. 939.)

CODIFICATION

Section was formerly classified to section 46 of Title 45, Railroads.

AMENDMENTS

1957—Pub. L. 85-50 substituted provision making appropriations for Interstate Commerce Commission available for carrying out sections 1201 and 1202 of this title, for provisions which made appropriations for enforcement and execution of sections 1 to 10 of Title 45 available for carrying out sections 1201 and 1202 of this title.

TRANSFER OF FUNCTIONS

The Department of Transportation was substituted for the Interstate Commerce Commission by section 6(e)(3) of Pub. L. 89-670, which created the Department of Transportation and transferred all powers, duties, and functions of the Interstate Commerce Commission relating to medals for heroism under this section to the Secretary of Transportation. See section 1655(e)(3) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1202 of this title.

CHAPTER 18—AIRWAYS MODERNIZATION

§§ 1211 to 1215. Repealed. Pub. L. 85-726, title XIV, § 1401(d), Aug. 23, 1958, 72 Stat. 806

Section 1211, Pub. L. 85-133, § 2, Aug. 14, 1957, 71 Stat. 349, related to the establishment of the Airways Modernization Board.

Section 1212, Pub. L. 85-133, § 3, Aug. 14, 1957, 71 Stat. 350, related to the powers and duties of the Chairman.

Section 1213, Pub. L. 85-133, § 4, Aug. 14, 1957, 71 Stat. 351, related to the transfer of related functions to the Board.

Section 1214, Pub. L. 85-133, § 5, Aug. 14, 1957, 71 Stat. 351, related to the duration of the Board.

Section 1215, Pub. L. 85-133, § 6, Aug. 14, 1957, 71 Stat. 351, authorized appropriations for the chapter.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85-726 qualified and took office (Oct. 31, 1958), see section 1505(2) of Pub. L. 85-726, set out as an Effective Date note under section 1301 of this title.

TRANSFER OF FUNCTIONS

All functions, records, property, facilities, employees, and unexpended balances of appropriations of the Airways Modernization Board were transferred to the Federal Aviation Agency by Ex. Ord. No. 10786, set out under section 1345 of this title.

CHAPTER 19—INTERSTATE COMMERCE ACT, PART V; LOAN GUARANTIES

Sec.
1231. Declaration of purpose.
1232. Definitions.
1233. Guarantee of loans, discounts, or advances; aggregate amount of loans.
1234. Conditions and limitations; statement of findings; declaration of dividends.
1235. Modification of guaranty.
1236. Payment of guaranties; action to recover payments made.
1237. Guaranty fees.
1238. Assistance of Government departments and agencies.
1239. Administrative expenses.
1239a. Audit by Comptroller General; financial transactions subject to audit; access to books, records, etc.; report to Congress; contents.
1240. Termination of authority.

Interstate Commerce Act

The Interstate Commerce Act of Feb. 4, 1887, ch. 104, 24 Stat. 379, as it existed prior to its division into parts, is embodied in chapter 1 (§ 1 et seq.) of this title. The original act was designated "Part I" and a new Part II, comprising chapter 8 (§ 301 et seq.) of this title, was added by act Aug. 9, 1935, ch. 498, 49 Stat. 543. Part III, constituting chapter 12 (§ 901 et seq.) of this title, was added by act Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 929. Part IV, constituting chapter 13 (§ 1001 et seq.) of this title was added by act May 16, 1942, ch. 318, § 1, 56 Stat. 284. Part V, constituting this chapter was added by Pub. L. 85-625, § 2, Aug. 12, 1958, 72 Stat. 568.

National Transportation Policy

Act Sept. 18, 1940, ch. 722, title I, § 1, 54 Stat. 899, amended the Interstate Commerce Act, chapters 1, 8, 12, 13, and 19 (§ 1 et seq., § 301 et seq., § 901 et seq., § 1001 et seq., and § 1231 et seq., respectively) of this title, by inserting before Part I thereof (chapter 1 of this title) the following provision entitled "National Transportation Policy": "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act [chapters 1, 8, 12, 13, and 19 of this title], so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act [chapters 1, 8, 12, 13, and 19 of this title] shall be administered and enforced with a view to carrying out the above declaration of policy."

§ 1231. Declaration of purpose

It is the purpose of this chapter to provide for assistance to common carriers by railroad subject to this Act to aid them in acquiring, constructing, or maintaining facilities and equipment for such purposes, and in such a manner, as to encourage the employment of labor and to foster the preservation and development of a national transportation system adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense.

(Feb. 4, 1887, ch. 104, pt. V, § 501, as added Aug. 12, 1958, Pub. L. 85-625, § 2, 72 Stat. 568.)

References in Text

This Act, referred to in text, means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 1231 et seq.) and chapters 1, 8, 12, and 13 (§§ 1 et seq., 301 et seq., 901 et seq., and 1001 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

Change of Name

The Postal Service has been redesignated the United States Postal Service pursuant to Pub. L. 91-375, § 6(c), Aug. 12, 1970, 84 Stat. 733, set out as a note preceding section 101 of Title 39, Postal Service.

Short Title of 1958 Amendment

Section 1 of Pub. L. 85-625 provided: "That this Act [enacting this chapter and section 13a of this title, amending sections 1, 13, 15a, and 303 of this title, and enacting provisions set out as notes under this section and section 303 of this title] may be cited as the 'Transportation Act of 1958'."

Short Title of Interstate Commerce Act

For Short Title of Interstate Commerce Act, see section 1 of act Sept. 18, 1940, set out as a Short Title note preceding section 1 of this title.

Section Referred to in Other Sections

This section is referred to in section 1233 of this title.

§ 1232. Definitions

For the purposes of this chapter—

(a) The term "Commission" means the Interstate Commerce Commission.

(b) The term "additions and betterments or other capital expenditures" means expenditures for the acquisition or construction of property used in transportation service, chargeable to the road, property, or equipment investment accounts, in the Uniform System of Accounts prescribed by the Interstate Commerce Commission.

(c) The term "expenditures for maintenance of property" means expenditures for labor, materials, and other costs incurred in maintaining, repairing, or renewing equipment, road, or property used in transportation service chargeable to operating expenses in accordance with the Uniform System of Accounts prescribed by the Commission.

(Feb. 4, 1887, ch. 104, pt. V, § 502, as added Aug. 12, 1958, Pub. L. 85-625, § 2, 72 Stat. 568.)

§ 1233. Guarantee of loans, discounts, or advances; aggregate amount of loans

In order to carry out the purpose declared in section 1231 of this title, the Commission, upon terms and conditions prescribed by it and consistent with the provisions of this chapter, may guarantee in whole or in part any public or private financing institution, or trustee under a trust indenture or agreement for the benefit of the holders of any securities issued thereunder, by commitment to purchase, agreement to share losses, or otherwise, against loss of princi-

pal or interest on any loan, discount, or advance, or on any commitment in connection therewith, which may be made, or which may have been made, for the purpose of aiding any common carrier by railroad subject to this Act in the financing or refinancing (1) of additions and betterments or other capital expenditures, made after January 1, 1957, or to reimburse the carrier for expenditures made from its own funds for such additions and betterments or other capital expenditures, or (2) of expenditures for the maintenance of property: *Provided*, That in no event shall the aggregate principal amount of all loans guaranteed by the Commission exceed $500,000,000.

(Feb. 4, 1887, ch. 104, pt. V, § 503, as added Aug. 12, 1958, Pub. L. 85-625, § 2, 72 Stat. 569.)

REFERENCES IN TEXT

This Act, referred to in text, means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 1231 et seq.) and chapters 1, 8, 12, and 13 (§§ 1 et seq., 301 et seq., 901 et seq., and 1001 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1234 of this title.

§ 1234. Conditions and limitations; statement of findings; declaration of dividends

(a) No guaranty shall be made under section 1233 of this title—

(1) unless the Commission finds that without such guaranty, in the amount thereof, the carrier would be unable to obtain necessary funds, on reasonable terms, for the purposes for which the loan is sought;

(2) if in the judgment of the Commission the loan involved is at a rate of interest which is unreasonably high;

(3) if the terms of such loan permit full repayment more than twenty-five years after the date thereof; or

(4) unless the Commission finds that the prospective earning power of the applicant carrier, together with the character and value of the security pledged, if any, furnish reasonable assurance of the applicant's ability to repay the loan within the time fixed therefor and reasonable protection to the United States.

A statement of the findings of the Commission required under the provisions of this subsection shall be made a matter of public record by the Commission with respect to each loan guaranteed under the provisions of this chapter.

(b) It shall be unlawful for any common carrier by railroad subject to this Act to declare any dividend on its preferred or common stock while there is any principal or interest remaining unpaid on any loan to such carrier made for the purpose of financing or refinancing expenditures for maintenance of property of such carrier, and guaranteed under this chapter.

(Feb. 4, 1887, ch. 104, pt. V, § 504, as added Aug. 12, 1958, Pub. L. 85-625, § 2, 72 Stat. 569, and amended July 13, 1972, Pub. L. 92-348, § 5(a), 86 Stat. 463.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 1231 et seq.) and chapters 1, 8, 12, and 13 (§§ 1 et seq., 301 et seq., 901 et seq., and 1001 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

AMENDMENTS

1972—Subsec. (a)(3). Pub. L. 92-348 substituted "twenty-five" for "fifteen".

§ 1235. Modification of guaranty

The Commission may consent to the modification of the provisions as to rate of interest, time of payment of interest or principal, security, if any, or other terms and conditions of any guaranty which it shall have entered into pursuant to this chapter, or the renewal or extension of any such guaranty for any period of time not exceeding twenty-five years from the date of the original guaranty, whenever the Commission shall determine it to be equitable to do so.

(Feb. 4, 1887, ch. 104, pt. V, § 505, as added Aug. 12, 1958, Pub. L. 85-625, § 2, 72 Stat. 569, and amended July 13, 1972, Pub. L. 92-348, § 5(b), 86 Stat. 463.)

AMENDMENTS

1972—Pub. L. 92-348 added provisions limiting the renewal or extension of any guaranty to any period of time not exceeding twenty-five years from the date of the original guaranty.

§ 1236. Payment of guaranties; action to recover payments made

(a) Payments required to be made as a consequence of any guaranty by the Commission made under this chapter shall be made by the Secretary of the Treasury from funds hereby authorized to be appropriated in such amounts as may be necessary for the purpose of carrying out the provisions of this chapter.

(b) In the event of any default on any such guaranteed loan, and payment in accordance with the guaranty by the United States, the Attorney General shall take such action as may be appropriate to recover the amount of such payments, with interest, from the defaulting carrier, carriers, or other persons liable therefor.

(Feb. 4, 1887, ch. 104, pt. V, § 506, as added Aug. 12, 1958, Pub. L. 85-625, § 2, 72 Stat. 569.)

§ 1237. Guaranty fees

The Commission shall prescribe and collect a guaranty fee in connection with each loan guaranteed under this chapter. Such fees shall not exceed such amounts as the Commission estimates to be necessary to cover the administrative costs of carrying out the provisions of this chapter. Sums realized from such fees shall be deposited in the Treasury as miscellaneous receipts.

(Feb. 4, 1887, ch. 104, pt. V, § 507, as added Aug. 12, 1958, Pub. L. 85-625, § 2, 72 Stat. 570.)

§ 1238. Assistance of Government departments and agencies

(a) To permit it to make use of such expert advice and services as it may require in carrying out the provisions of this chapter, the Commission may use available services and facilities of departments and other agencies and instrumentalities of the Government, with their consent and on a reimbursable basis.

(b) Departments, agencies, and instrumentalities of the Government shall exercise their powers, duties, and functions in such manner as will assist in carrying out the objectives of this chapter.

(Feb. 4, 1887, ch. 104, pt. V, § 508, as added Aug. 12, 1958, Pub. L. 85-625, § 2, 72 Stat. 570.)

§ 1239. Administrative expenses

Administrative expenses under this chapter shall be paid from appropriations made to the Commission for administrative expenses.

(Feb. 4, 1887, ch. 104, pt. V, § 509, as added Aug. 12, 1958, Pub. L. 85-625, § 2, 72 Stat. 570.)

§ 1239a. Audit by Comptroller General; financial transactions subject to audit; access to books, records, etc.; report to Congress; contents

(a) In any case in which—

(1) there is outstanding any guaranty by the Commission made under this chapter; or

(2) the Secretary of the Treasury is required to make any payment as a consequence of any guaranty by the Commission made under this chapter;

the financial transactions of the common carrier by railroad subject to this Act with respect to which such guaranty was made may be audited by the Comptroller General of the United States under such rules and regulations as he may prescribe. The representatives of the Comptroller General shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by such common carrier by railroad pertaining to its financial transactions and necessary to facilitate the audit, and such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians.

(b) A report of each such audit shall be made by the Comptroller General to the Congress. The report to the Congress shall contain such comments and information as the Comptroller General may deem necessary to inform the Congress of the financial operations and condition of the common carrier by railroad involved in such audit, together with such recommendations with respect thereto as he may deem advisable. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit, which, in the opinion of the Comptroller General, adversely affects the financial operations or condition of the common carrier by railroad involved in such audit or lessens the protection afforded the United States at the time the original guaranty was made. A copy of each report shall be furnished to the Commission at the time it is submitted to the Congress.

(Feb. 4, 1887, ch. 104, pt. V, § 510, as added July 13, 1972, Pub. L. 92-348, § 6, 86 Stat. 463.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), means act Feb. 4, 1887, ch. 104, 24 Stat. 379, known as the Interstate Commerce Act, which is classified generally to this chapter (§ 1231 et seq.) and chapters 1, 8, 12, and 13 (§§ 1 et seq., 301 et seq., 901 et seq., and 1001 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

§ 1240. Termination of authority

Except with respect to such applications as may then be pending, the authority granted by this chapter shall terminate at the close of June 30, 1963: *Provided*, That its provisions shall remain in effect thereafter for the purposes of guaranties made by the Commission.

(Feb. 4, 1887, ch. 104, pt. V, § 511, formerly § 510, as added Aug. 12, 1958, Pub. L. 85-625, § 2, 72 Stat. 570, amended Apr. 1, 1961, Pub. L. 87-16, 75 Stat. 41, and renumbered July 13, 1972, Pub. L. 92-348, § 6, 86 Stat. 463.)

AMENDMENTS

1961—Pub. L. 87-16 substituted "June 30, 1963" for "March 31, 1961".

CHAPTER 20—FEDERAL AVIATION PROGRAM

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
1301. Definitions.
1302. Consideration of matters in public interest by Board.
1303. Consideration of matters in public interest by Secretary of Transportation.
1304. Public right of transit.

SUBCHAPTER II—CIVIL AERONAUTICS BOARD; GENERAL POWERS

1321. Agency of the United States.
(a) Continuation; membership; removal of members; political affiliation; chairman.
(b) Qualifications of members.
(c) Quorum; principal office; seal.
1322. Officers and employees.
(a) Secretary of Board; secretaries and administrative assistants for members; other personnel.
(b) Repealed.
(c) Temporary personnel.
(d) Cooperation with other Federal agencies.
1323. Authorization of expenditures and travel.
(a) Expenditures.
(b) Travel.
(c) Acceptance and disposal of gifts and donations.
1324. General powers and duties of the Board.
(a) Performance of acts; conduct of investigations; orders, rules, regulations, and procedure.
(b) Cooperation with State aeronautical agencies.
(c) Exchange of information with foreign governments.

Sec.
(d) Report of proceedings and investigations; publication; evidence.
1325. Annual report to Congress.

SUBCHAPTER III—ORGANIZATION OF ADMINISTRATION; POWERS AND DUTIES OF ADMINISTRATOR

1341. Federal Aviation Administration.
(a) Establishment; Administrator; appointment; powers and duties.
(b) Qualifications of Administrator.
(c) Principal office; seal.
1342. Deputy Administrator; appointment; powers and duties; qualifications.
1343. General powers and duties of Secretary of Transportation.
(a) Military participation; detail of members of Armed Forces.
(b) Exchange of information.
(c) Development of plans for discharge of responsibilities in event of war; legislative proposal; transfer of functions.
(d) Officers and employees.
(e) Omitted.
(f) Scientific or professional personnel.
(g) Advisory committees and consultants.
(h) Repealed.
(i) Cooperation with other agencies.
1344. Administration.
(a) Authorization of expenditures and travel.
(b) Supplies and materials for overseas installations.
(c) Acquisition and disposal of property.
(d) Delegation of functions.
(e) Negotiation of purchases and contracts; report to Congressional Committees.
1345. Presidential authority to transfer certain functions.
1346. Fostering of civil aeronautics and air commerce.
1346a. Civil aviation information distribution program.
1347. National defense and civil needs.
1348. Airspace control and facilities.
(a) Use of airspace.
(b) Air navigation facilities.
(c) Air traffic rules.
(d) Applicability of administrative procedure provisions.
(e) Exemptions.
(f) Exception for military emergencies.
1349. Expenditure of Federal funds for certain airports and air navigation facilities; location of airports, landing areas, and missile and rocket sites.
1350. Establishment or construction of airports and landing areas not involving expenditure of Federal funds.
1351. Meteorological service.
1352. Collection and dissemination of information.
1353. Development planning.
(a) Use of navigable airspace; location of landing areas, Federal airways, radar installations, and air navigation facilities.
(b) Aircraft, aircraft engines, propellers, and appliances.
(c) Research and development.
1354. Other powers and duties of Secretary of Transportation.
(a) Generally.
(b) Report of proceedings and investigations; publication of reports, orders, decisions, rules and regulations; use as evidence.
(c) Power to conduct hearings and investigations.

Sec.
(d) Training schools.
(e) Annual report to the President and Congress.
1355. Delegation of powers and duties to private persons; application for reconsideration.
1356. Screening procedures for passengers; promulgation and amendment of regulations by Administrator; reports to Congress; exempted air transportation operations.
1356a. Security measures in foreign air transportation.
(a) Compensation of air carriers.
(b) Definitions applicable.
(c) Authorization of appropriations.
1357. Air transportation security.
(a) Rules and regulations; authority of Administrator to prescribe; purposes; consultations and criteria for promulgation and amendment.
(b) Establishment of security programs by airport operators; utilization of qualified State, local and private law enforcement personnel; procedure for utilization of personnel of other Federal departments and agencies or employed directly by Administrator.
(c) Training for personnel employed to carry out security programs; uniform standards for training and minimum qualifications of personnel eligible for training.
(d) Research and development by Administrator of security systems, procedures, facilities, and devices; disclosure of confidential information.
(e) Overall responsibility of Administrator.
(f) Definitions.
1358. Airport security in Alaska; exemptions from requirements.

SUBCHAPTER IV—AIR CARRIER ECONOMIC REGULATION

1371. Certificate of public convenience and necessity.
(a) Essentiality.
(b) Application.
(c) Notice of application; filing of protest or memorandum; hearing.
(d) Issuance.
(e) Terms, conditions, and limitations.
(f) Effective date and duration.
(g) Alteration, amendment, modification, suspension, or revocation.
(h) Transfer.
(i) Rights in the use of airspace, airways, landing areas, or air-navigation facilities.
(j) Abandonment of routes.
(k) Compliance with labor legislation.
(l) Carriage of mail.
(m) Application for new mail service.
(n) Additional powers and duties of Board with respect to supplemental air carriers.
(o) Interstate air transportation of persons or property.
1372. Permits to foreign air carriers.
(a) Necessity.
(b) Issuance.
(c) Application.
(d) Notice of application; filing of protest or memorandum; hearing.
(e) Terms, conditions, and limitations.
(f) Alteration, modification, amendment, suspension, cancellation, or revocation.
(g) Transfer of permit.

Sec.
1373. Tariffs of air carriers.
(a) Filing, posting, and publication; rejection of tariffs.
(b) Observance of tariffs; granting, soliciting, or accepting rebates.
(c) Notice of change in tariff.
(d) Filing of divisions of rates and charges.
1374. Rates for carriage of persons and property; duty to provide service, rates, and divisions; discrimination.
1375. Transportation of mail.
(a) Postal rules and regulations.
(b) Mail schedules.
(c) Maximum mail load.
(d) Tender of mail.
(e) Foreign postal arrangement.
(f) Transportation of foreign mail.
(g) Evidence of performance of mail service.
(h) Emergency mail service.
(i) Experimental airmail service.
(j) Free travel for postal employees.
1376. Rates for transportation of mail.
(a) Authorization to fix rates.
(b) Rate making elements.
(c) Payments for transportation of mail.
(d) Treatment of proceeds of disposition of certain property.
(e) Statements of Postmaster General and carrier.
(f) Weighing of mail.
(g) Availability of appropriations.
(h) Payments to foreign air carriers; rates pursuant to Universal Postal Union Convention; criteria for changes in rates by Civil Aeronautics Board.
1377. Accounts, records, and reports.
(a) Filing of reports.
(b) Disclosure of stock ownership.
(c) Disclosure of stock ownership by officer or director.
(d) Form of accounts, records, and memoranda.
(e) Inspection of accounts and property.
1378. Consolidation, merger, and acquisition of control.
(a) Prohibited acts.
(b) Application to Board; hearing; approval; disposal without hearing.
(c) Interests in ground facilities.
(d) Jurisdiction of accounts of noncarriers.
(e) Investigation of violations.
(f) Presumption of control; beneficial ownership.
1379. Prohibited interests; interlocking relationships; profit from transfer of securities.
1380. Loans and financial aid; aircraft loan guarantees.
1381. Methods of competition.
1382. Pooling and other agreements; filing; approval by Board.
1383. Form of control.
1384. Legal restraints.
1385. Inquiry into air carrier management.
1386. Classification and exemption of carriers.
1387. Special operating authorizations.
(a) Authority of Board to issue.
(b) Terms of authorization.
(c) Procedure.

SUBCHAPTER V—NATIONALITY AND OWNERSHIP OF AIRCRAFT

1401. Registration of aircraft nationality.
(a) Necessity; aircraft of national-defense forces; transfer of ownership.
(b) Eligibility for registration.
(c) Issuance of certificate.
(d) Applications.
(e) Suspension or revocation.
(f) Effect of registration.
1402. Registration of engines, propellers, and appliances.
1403. Recordation of aircraft ownership.
(a) Establishment of recording system.
(b) Recording of releases, cancellations, discharges, or satisfactions.
(c) Validity of conveyances or other instruments; filing.
(d) Effect of recording.
(e) Form of conveyances or other instruments.
(f) Index of conveyances and other instruments.
(g) Regulations.
(h) Previously unrecorded ownership of aircraft.
1404. Limitation of security owners' liability.
1405. Dealers' aircraft registration certificates.
1406. Law governing validity of certain instruments.

SUBCHAPTER VI—SAFETY REGULATION OF CIVIL AERONAUTICS

1421. Powers and duties of Secretary of Transportation.
(a) Minimum standards; rules and regulations.
(b) Consideration of needs of service; classification of standards, rules, regulations, and certificates.
(c) Exemptions.
(d) Installation of emergency locator transmitters; aircraft subject to coverage.
(e) Aviation fuel standards; establishment, implementation and enforcement.
1422. Airman certificates.
(a) Authorization to issue.
(b) Application; issuance or denial; petition for review; hearing; determination; issuance of certificates to aliens.
(c) Form and recording.
1423. Aircraft certificates.
(a) Authorization to issue; application; investigation; tests; issuance of type certificate.
(b) Production certificates.
(c) Airworthiness certificates.
1424. Air carrier operating certificates; authorization to issue; minimum safety standards; application; issuance.
1425. Maintenance of equipment in air transportation; duty of carriers and airmen; inspection of aircraft and equipment.
1426. Air navigation facility rating; issuance of certificate.
1427. Air agency rating; issuance of certificate.
1428. Form of applications for certificates.
1429. Reinspection or reexamination; amendment, suspension, or revocation of certification.
(a) Procedure; notification; hearing; appeal to National Transportation Safety Board; judicial review.
(b) Violations of certain laws.
1430. Violations; exemption of foreign aircraft and airmen.
1431. Control and abatement of aircraft noise and sonic boom.
(a) Definitions.
(b) Consultations; standards; rules and regulations; aircraft certificates.
(c) Submission of proposed regulations to FAA by EPA; publication; hearing; review of prescribed regulations; report and supplemental report.

Sec.
(d) Considerations determinative of standards, rules, and regulations.
(e) Amendment, modification, suspension, or revocation of certificate; notice and appeal rights.
1432. Airport operating certificates.
(a) Power to issue.
(b) Issuance; terms and conditions.
(c) Exemption from requirements relating to firefighting and rescue equipment.

SUBCHAPTER VII—AIRCRAFT ACCIDENT INVESTIGATION

1441. Accidents involving civil aircraft.
(a) General duties of National Transportation Safety Board.
(b) Employment of temporary personnel.
(c) Conduct of investigations; examinations and tests; autopsies and protection of religious beliefs.
(d) Preservation of aircraft, engines, propellers, appliances or property aboard aircraft involved in accidents.
(e) Use of records and reports as evidence.
(f) Investigations by Secretary of Transportation; report.
(g) Participation by Secretary of Transportation in investigations.
1442. Accidents involving military aircraft.
(a) Participation in investigations by military authorities.
(b) Participation in investigations by Secretary of Transportation.
(c) Furnishing information to Secretary of Transportation and National Transportation Safety Board.
1443. Special Boards of Inquiry.
(a) Establishment; composition.
(b) Qualifications of public members.
(c) Authority of Boards.

SUBCHAPTER VIII—OTHER ADMINISTRATIVE AGENCIES

1461. The President of the United States; suspension and rejection of rates in foreign air transportation.
1462. The Department of State.
1463. Weather Service.

SUBCHAPTER IX—PENALTIES

1471. Civil penalties; compromise; liens.
1472. Criminal penalties.
(a) Generally.
(b) Forgery of certificates and false marking of aircraft.
(c) Interference with air navigation.
(d) Offering, granting, giving, soliciting, or accepting rebates or concessions.
(e) Failure to file reports; falsification of records.
(f) Divulging information; information to Congressional committees.
(g) Refusal to testify.
(h) Safe transportation of hazardous materials.
(i) Aircraft piracy.
(j) Interference with flight crew members or flight attendants.
(k) Certain crimes aboard aircraft in flight.
(l) Carrying weapons or explosives aboard aircraft.
(m) False information.
(n) Aircraft piracy outside special aircraft jurisdiction of the United States.
(o) Investigations by Federal Bureau of Investigation.
(p) Interference with aircraft accident investigation.

Sec.
1473. Venue and prosecution of offenses.
(a) District of offense or district of arrest.
(b) Procedures in respect to civil penalties.
(c) Procedures in respect to aircraft piracy penalties.
1474. Violations of section 1509 of this title.

SUBCHAPTER X—PROCEDURE

1481. Conduct of proceedings.
1482. Complaints to and investigations by Secretary of Transportation and Board.
(a) Filing of complaints; complaints against members of the Armed Forces.
(b) Investigations on initiative of Administrator or Board.
(c) Entry of orders for compliance with chapter.
(d) Power to prescribe rates and practices of air carriers.
(e) Rule of rate making.
(f) Removal of discrimination in foreign air transportation.
(g) Suspension of rates.
(h) Power to prescribe divisions of rates.
(i) Power to establish through air transportation service.
(j) Suspension and rejection of rates in foreign air transportation.
1483. Joint Boards.
(a) Designation.
(b) Through service and joint rates.
(c) Jurisdiction of Boards.
(d) Power of Boards.
(e) Judicial enforcement and review of orders.
1484. Evidence.
(a) Power to take evidence.
(b) Issuance of subpenas; witness fees.
(c) Enforcement of subpenas.
(d) Contempt.
(e) Depositions.
(f) Method of taking depositions.
(g) Foreign depositions.
(h) Fees in connection with depositions.
1485. Orders, notices, and service.
(a) Effective date of orders; emergency orders.
(b) Designation of agent for service.
(c) Manner of service.
(d) Suspension or modification of orders.
(e) Compliance with orders.
(f) Findings of fact; service of orders.
1486. Judicial review.
(a) Orders subject to review; petition for review.
(b) Venue.
(c) Notice to Board or Secretary of Transportation filing of record.
(d) Power of court.
(e) Conclusiveness of findings of fact; objections.
(f) Review by Supreme Court.
1487. Judicial enforcement; jurisdiction; application; costs.
1488. Participation by Board or Secretary of Transportation in court proceedings.
1489. Joinder of parties; intervention.

SUBCHAPTER XI—MISCELLANEOUS

1501. Hazards to air commerce.
1502. International agreements.
1503. Documents as evidence.
1504. Public disclosure of information.

Sec.
1505. Cooperation with government agencies.
1506. Remedies not exclusive.
1507. Public use of facilities; emergency sale of equipment, supplies and services.
1508. Declaration of national sovereignty in air space; operation of foreign aircraft.
1509. Application of existing laws relating to foreign commerce.
(a) Navigation and shipping.
(b) Ports of entry for civil aircraft.
(c) Entry and clearance of vessels.
(d) Animal and plant quarantine.
(e) Appropriations; acquisition of space by Administrator of General Services.
1510. Geographical extension of jurisdiction.
1511. Authority to refuse transportation; grounds; agreements for carriage of persons or property deemed to include agreements to refuse carriage upon refusal of consent to search.
1512. State or subdivision income tax withholding on compensation paid to interstate air carrier employees.
(a) Withholding where employee earns more than 50 per centum of compensation paid by carrier to him or where employee resides; filing of information return by carrier.
(b) State or subdivision where employee deemed to have earned more than 50 per centum of compensation.
(c) Definitions.
1513. State taxation of air commerce.
(a) Prohibition; exemption.
(b) Permissible State taxes and fees.
(c) Nonapplicability of subsection (a) to airport operating authority until December 31, 1973.
1514. Suspension of air services by President; grounds; authority of President deemed condition to issuance of certificate of public convenience and necessity, etc.; unlawful activities.
1515. Security standards in foreign air transportation; notice to foreign nation by Secretary of State of standards requirements; determination by Secretary of Transportation and notice to foreign nations of compliance with minimum standards and necessary remedial measures; effect of failure to take remedial measures.
1516. Property not lawfully transportable in aircraft cabin transported as baggage; liability of air carrier for loss or damage; terms and conditions of liability.
1517. Transportation of government financed passengers and property by certified carriers; disallowance of payments by Comptroller General.

SUBCHAPTER XII—SECURITY PROVISIONS

1521. Declaration of purpose.
1522. Security control of air traffic.
1523. Penalties.

SUBCHAPTER XIII—WAR RISK INSURANCE

1531. Definitions.
1532. Authority to provide insurance; consideration of risk.
1533. Persons, property, and interests insurable.
1534. Insurance of property of Government departments and agencies; indemnity agreements.
1535. Reinsurance; rates; allowances to insurance carriers.
1536. Insurance fund.
(a) Creation of revolving fund; payments from fund.
(b) Appropriations.
(c) Payment of surplus into Treasury.
(d) Annual payments to Treasury as miscellaneous receipts.
(e) Contributions to Civil Service Retirement and Disability Fund and employees' compensation fund; annual billings.
(f) Investment of revolving fund.
1537. Administrative provisions.
(a) Issuance of policies; rules and regulations; settlement of claims.
(b) Forms and policies; rates.
(c) Commercial practice controlling; limitation on fees.
(d) Underwriting agents.
(e) Utilization of services of other Government agencies.
(f) Budget program; maintenance of accounts; audit; credit for certain expenditures.
1538. Rights of airmen under existing law.
1539. Annual and quarterly reports to Congress.
1540. Actions on claims for losses; jurisdiction of courts; limitation of actions.
1541. Additional insurance with other underwriters.
1542. Expiration of authority to provide insurance.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1356a, 1653, 1701, 1714, 1742, 1903 of this title; title 7 section 136q; title 11 section 516; title 14 section 82; title 15 sections 45, 1607, 1681s, 1691c; title 26 section 47; title 40 App. section 208; title 42 section 1857f-10.

SUBCHAPTER I—GENERAL PROVISIONS

§ 1301. Definitions

As used in this chapter, unless the context otherwise requires—

(1) "Administrator" means the Administrator of the Federal Aviation Administration.

(2) "Aeronautics" means the science and art of flight.

(3) "Air carrier" means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation: *Provided*, That the Board may by order relieve air carriers who are not directly engaged in the operation of aircraft in air transportation from the provisions of this chapter to the extent and for such periods as may be in the public interest.

(4) "Air commerce" means interstate, overseas, or foreign air commerce or the transportation of mail by aircraft or any operation or navigation of aircraft within the limits of any Federal airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce.

(5) "Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air.

(6) "Aircraft engine" means an engine used, or intended to be used, for propulsion of aircraft and includes all parts, appurtenances, and accessories thereof other than propellers.

(7) "Airman" means any individual who engages, as the person in command or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way; and (except to the extent the Secretary of Transportation may otherwise provide with respect to individuals employed outside the United States) any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft, aircraft engines, propellers, or appli-

ances; and any individual who serves in the capacity of aircraft dispatcher or air-traffic control-tower operator.

(8) "Air navigation facility" means any facility used in, available for use in, or designed for use in, aid of air navigation, including landing areas, lights, any apparatus or equipment for disseminating weather information, for signaling, for radio-directional finding, or for radio or other electrical communication, and any other structure or mechanism having a similar purpose for guiding or controlling flight in the air or the landing and take-off of aircraft.

(9) "Airport" means a landing area used regularly by aircraft for receiving or discharging passengers or cargo.

(10) "Air transportation" means interstate, overseas, or foreign air transportation or the transportation of mail by aircraft.

(11) "Appliances" means instruments, equipment, apparatus, parts, appurtenances, or accessories, of whatever description, which are used, or are capable of being or intended to be used, in the navigation, operation, or control of aircraft in flight (including parachutes and including communication equipment and any other mechanism or mechanisms installed in or attached to aircraft during flight), and which are not a part or parts of aircraft, aircraft engines, or propellers.

(12) "Board" means the Civil Aeronautics Board.

(13) "Citizen of the United States" means (a) an individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is such an individual, or (c) a corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in which at least 75 per centum of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

(14) "Civil aircraft" means any aircraft other than a public aircraft.

(15) "Civil aircraft of the United States" means any aircraft registered as provided in this chapter.

(16) "Conditional sale" means (a) any contract for the sale of an aircraft, aircraft engine, propeller, appliance, or spare part under which possession is delivered to the buyer and the property is to vest in the buyer at a subsequent time, upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency; or (b) any contract for the bailment or leasing of an aircraft, aircraft engine, propeller, appliance, or spare part, by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value thereof, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner thereof upon full compliance with the terms of the contract. The buyer, bailee, or lessee shall be deemed to be the person by whom any such contract is made or given.

(17) "Conveyance" means a bill of sale, contract of conditional sale, mortgage, assignment of mortgage, or other instrument affecting title to, or interest in, property.

(18) "Federal airway" means a portion of the navigable airspace of the United States designated by the Secretary of Transportation as a Federal airway.

(19) "Foreign air carrier" means any person, not a citizen of the United States, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in foreign air transportation.

(20) "Interstate air commerce", "overseas air commerce", and "foreign air commerce", respectively, mean the carriage by aircraft of persons or property for compensation or hire, or the carriage of mail by aircraft, or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation, in commerce between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof;

whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

(21) "Interstate air transportation", "overseas air transportation", and "foreign air transportation", respectively, mean the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and any place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof;

whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

(22) "Intrastate air carrier" means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage solely in intrastate air transportation.

(23) "Intrastate air transportation" means the carriage of persons or property as a common carrier for compensation or hire, by turbojet-powered aircraft capable of carrying thirty or more persons, wholly within the same State of the United States.

(24) "Landing area" means any locality, either of land or water, including airports and intermediate landing fields, which is used, or intended to be used, for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

(25) "Mail" means United States mail and foreign-transit mail.

(26) "Navigable airspace" means airspace above the minimum altitudes of flight prescribed by regulations issued under this chapter, and shall include airspace needed to insure safety in take-off and landing of aircraft.

(27) "Navigation of aircraft" or "navigate aircraft" includes the piloting of aircraft.

(28) "Operation of aircraft" or "operate aircraft" means the use of aircraft, for the purpose of air navigation and includes the navigation of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of this chapter.

(29) "Person" means any individual, firm, copartnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(30) "Propeller" includes all parts, appurtenances, and accessories thereof.

(31) "Possessions of the United States" means (a) the Canal Zone, but nothing herein shall impair or affect the jurisdiction which has heretofore been, or may hereafter be, granted to the President in respect of air navigation in the Canal Zone; and (b) all other possessions of the United States. Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references in this chapter to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

(32) "Public aircraft" means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any State, Territory, or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

(33) "Spare parts" means parts, appurtenances, and accessories of aircraft (other than aircraft engines and propellers), of aircraft engines (other than propellers), of propellers and of appliances, maintained for installation or use in an aircraft, aircraft engine, propeller, or appliance, but which at the time are not installed therein or attached thereto.

(34) The term "special aircraft jurisdiction of the United States" includes—

(a) civil aircraft of the United States;

(b) aircraft of the national defense forces of the United States;

(c) any other aircraft within the United States;

(d) any other aircraft outside the United States—

(i) that has its next scheduled destination or last point of departure in the United States, if that aircraft next actually lands in the United States; or

(ii) having "an offense", as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft, committed aboard, if that aircraft lands in the United States with the alleged offender still aboard; and

(e) other aircraft leased without crew to a lessee who has his principal place of business in the United States, or if none, who has his permanent residence in the United States;

while that aircraft is in flight, which is from the moment when all external doors are closed following embarkation until the moment when one such door is opened for disembarkation or in the case of a forced landing, until the competent authorities take over the responsibility for the aircraft and for the persons and property aboard.

(35) "Supplemental air carrier" means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

(36) "Supplemental air transportation" means charter trips, including inclusive tour charter trips, in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 1371(d)(3) of this title to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 1371(d)(1) and (2) of this title. Nothing in this paragraph shall permit a supplemental air carrier to sell or offer for sale an inclusive tour in air transportation by selling or offering for sale individual tickets directly to members of the general public, or to do so indirectly by controlling, being controlled by, or under common control with, a person authorized by the Board to make such sales.

(37) "Ticket agent" means any person, not an air carrier or a foreign air carrier and not a bona fide employee of an air carrier or foreign air carrier, who, as principal or agent, sells or offers for sale any air transportation, or negotiates for, or holds himself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts or arranges for, such transportation.

(38) "United States" means the several States, the District of Columbia, and the several Territories and possessions of the United States, including the territorial waters and the overlying airspace thereof.

(Pub. L. 85-726, title I, § 101, Aug. 23, 1958, 72 Stat. 737; Pub. L. 87-197, § 3, Sept. 5, 1961, 75 Stat. 467; Pub. L. 87-528, § 1, July 10, 1962, 76

Stat. 143; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937; Pub. L. 90-514, § 1, Sept. 26, 1968, 82 Stat. 867; Pub. L. 91-449, § 1(1), (2), Oct. 14, 1970, 84 Stat. 921; Pub. L. 93-366, title I, § 102, title II, § 206, Aug. 5, 1974, 88 Stat. 409, 419.)

REFERENCES IN TEXT

This chapter, referred to in text preceding par. (1) and pars. (3), (15), (26), (28), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out below and Tables volume.

AMENDMENTS

1974—Pars. (22) to (33). Pub. L. 93-366, § 206, added pars. (22) and (23). Former pars. (22) to (31) were redesignated (24) to (33), respectively.

Par. (34). Pub. L. 93-366, §§ 102, 206, redesignated par. (32) as (34) and, as so redesignated, relettered subpars. (c)(i) as (c), and (c)(ii) as (d)(i), added subpars. (d)(ii) and (e), and expanded time period when, for purpose of definition, aircraft is considered in flight.

Pars. (35) to (38). Pub. L. 93-366, § 206, redesignated pars. (33) to (36) as (35) to (38), respectively.

1970—Pub. L. 91-449 redesignated pars. (32), (33), (34), and (35) as pars. (33), (34), (35) and (36) and added new par. (32).

1968—Par. (33). Pub. L. 90-514 expanded supplemental air transportation to include the conduct of inclusive tour charter trips but prohibited individually ticketed service by supplemental air carriers.

1962—Pars. (32), (33). Pub. L. 87-528 added pars. (32) and (33). Former pars. (32) and (33) redesignated (34) and (35), respectively.

Pars. (34), (35). Pub. L. 87-528 redesignated pars. (32) and (33) as (34) and (35), respectively.

1961—Par. (4). Pub. L. 87-197 substituted "operation or navigation of aircraft within" for "operation or navigation or aircraft within."

EFFECTIVE DATE

Section 1505 of Pub. L. 85-726 provided that:

"The provisions of this Act [see Short Title note below] shall become effective as follows:

"(1) Section 301, section 302(a), (b), (c), (f), (i), and (k), section 303(a), section 304, and section 1502 [section 1341, section 1342, section 1343(a), (d), (g), and (l), section 1344(a), section 1345, and note set out under section 1341 of this title] shall become effective on the date of enactment of this Act [Aug. 23, 1958]; and

"(2) The remaining provisions shall become effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now, Federal Aviation Administration] first appointed under this Act [this chapter] qualifies and takes office." [The Administrator of the Federal Aviation Agency was appointed, qualified, and took office on Oct. 31, 1958.]

SHORT TITLE OF 1974 AMENDMENT

Section 101 of Pub. L. 93-366 provided that: "This title [which enacted sections 1514 and 1515 of this title and amended sections 1301, 1471 to 1473, and 1487 of this title] may be cited as the 'Antihijacking Act of 1974'."

Section 201 of Pub. L. 93-366 provided that: "This title [which enacted sections 1356, 1357, and 1516 of this title and amended sections 1301, 1472, and 1511 of this title] may be cited as the 'Air Transportation Security Act of 1974'."

SHORT TITLE

Section 1 of Pub. L. 85-726 provided: "That this Act [enacting this chapter, amending sections 212, 485a, 485b, 1101, 1102, 1103, 1105, 1108, 1111, 1116, 1151, 1152, 1155, 1157, and 1160 of this title, section 133t of former Title 5, Executive Departments and Government Officers and Employees, sections 81, 82, and 90 of Title 14, Coast Guard, section 45 of Title 15, Commerce and Trade, section 7a of Title 16, Conservation, section 686 of Title 31, Money and Finance, sections 470 and 488a of former Title 39, The Postal Service, section 474 of Title 40, Public Buildings, Property, and Works, sections 485, 485c, and 485d of Title 48, Territories and Insular Possessions, section 123 of Title 50, War and National Defense, and sections 1622 to 1622c of the Appendix to Title 50, War and National Defense, repealed sections 171, 174 to 177, 179 to 184, 401 to 403, 421, 422, 423 to 427, 451 to 460, 481 to 485, 486 to 496, 521 to 524, 551 to 560, 581, 582, 601 to 603, 621 to 623, 641 to 649, 671 to 681, 701 to 705, 711 to 722, and 1211 to 1215 of this title, section 7 of Reorg. Plan No. III of 1940, eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231, section 7 of Reorg. Plan No. IV of 1940, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1234, and Reorg. Plan No. 10 of 1953, eff. June 12, 1953, 18 F.R. 3375, 67 Stat. 634, set out in the Appendix to Title 5, Government Organization and Employees, and enacted notes set out under sections 486, 1301, 1321, and 1341 of this title and section 133z-15 of former Title 5] may be cited as the 'Federal Aviation Act of 1958'."

SEPARABILITY OF PROVISIONS

Section 1504 of Pub. L. 85-726 provided that: "If any provision of this Act [see Short Title note set out above] or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby."

SAVINGS CLAUSE; EFFECT OF TRANSFERS, REPEALS, AND AMENDMENTS

Section 1501 of Pub. L. 85-726 provided that:

"(a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, rates, and privileges which have been issued, made, or granted, or allowed to become effective, by the President, the Department of Commerce, the Secretary of Commerce, the Administrator of Civil Aeronautics, the Civil Aeronautics Board, the Airways Modernization Board, the Secretary of the Treasury, the Secretary of Agriculture, or the Postmaster General, or any court of competent jurisdiction, under any provision of law repealed or amended by this Act [see Short Title note set out above], or in the exercise of duties, powers, or functions which, under this Act, are vested in the Administrator of the Federal Aviation Agency [now Federal Aviation Administration] or the Civil Aeronautics Board, which are in effect at the time this section takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Administrator or the Board, as the case may be, or by any court of competent jurisdiction, or by operation of law.

"(b) The provisions of this Act shall not affect any proceedings pending at the time this section takes effect before the Secretary of Commerce, the Administrator of Civil Aeronautics, the Civil Aeronautics Board, the Chairman of the Airways Modernization Board, the Secretary of the Treasury, or the Secretary of Agriculture; but any such proceedings shall be continued before the successor agency, orders therein issued, appeals therefrom taken, and payments made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Administrator, the Civil Aeronautics Board, the Secretary of the Treasury, or the Secretary of Agriculture or by operation of law.

"(c) The provisions of this Act shall not affect suits commenced prior to the date on which this section takes effect; and all such suits shall be continued by the successor agency, proceedings therein had, appeals therein taken, and judgments therein rendered, in the same manner and with the same effect as if this Act had not been passed. No suit, action, or other proceeding lawfully commenced by or against any agency or officer of the United States, in relation to the discharge of official duties, shall abate by reason of any

transfer of authority, power, or duties from such agency or officer to the Administrator or the Board under the provisions of this Act, but the court, upon motion or supplemental petition filed at any time within twelve months after such transfer, showing the necessity for a survival of such suit, action, or other proceeding to obtain a settlement of the questions involved, may allow the same to be maintained by or against the Administrator or the Board."

REPEAL OF INCONSISTENT LAWS

Section 1401(e) of Pub. L. 85-726 provided that: "All other Acts or parts of Acts inconsistent with any provision of this Act [see Short Title note set out above] are hereby repealed."

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof, and all functions, powers, and duties of the Civil Aeronautics Board and of the Chairman, members, offices, and officers thereof under subchapters VI and VII of this chapter, were transferred to and vested in the Secretary of Transportation by sections 6(c)(1) and 6(d) of Pub. L. 89-670, section 3 of which created the Department of Transportation. See sections 1652, 1655, 1657, and 1903 of this title.

In par. (1), "Federal Aviation Administration" was substituted for "Federal Aviation Agency" pursuant to Pub. L. 89-670, §§ 3(e), 6(c)(1), Oct. 15, 1966, 80 Stat. 932, 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation and established a Federal Aviation Administration in the Department of Transportation. See sections 1652(e) and 1655(c)(1) of this title.

In par. (7), "Secretary of Transportation" was substituted for "Administrator" (meaning Administrator of the Federal Aviation Agency) pursuant to Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator thereof under this section to the Secretary of Transportation. See section 1655 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1531, 1729, 1807 of this title; title 15 section 2052; title 18 sections 112, 878, 1116, 1201; title 26 section 4492; title 42 section 4902.

§ 1302. Consideration of matters in public interest by Board

In the exercise and performance of its powers and duties under this chapter, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;

(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;

(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(e) The promotion of safety in air commerce; and

(f) The promotion, encouragement, and development of civil aeronautics.

(Pub. L. 85-726, title I, § 102, Aug. 23, 1958, 72 Stat. 740.)

REFERENCES IN TEXT

This chapter, referred to in text preceding subsec. (a), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

CHANGE OF NAME

The Postal Service has been redesignated the United States Postal Service pursuant to Pub. L. 91-375, § 6(a), Aug. 12, 1970, 84 Stat. 733, set out as a note preceding section 101 of Title 39, Postal Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 section 5402.

§ 1303. Consideration of matters in public interest by Secretary of Transportation

In the exercise and performance of his powers and duties under this chapter the Secretary of Transportation shall consider the following, among other things, as being in the public interest;

(a) The regulation of air commerce in such manner as to best promote its development and safety and fulfill the requirements of national defense;

(b) The promotion, encouragement, and development of civil aeronautics;

(c) The control of the use of the navigable airspace of the United States and the regulation of both civil and military operations in such airspace in the interest of the safety and efficiency of both;

(d) The consolidation of research and development with respect to air navigation facilities, as well as the installation and operation thereof;

(e) The development and operation of a common system of air traffic control and navigation for both military and civil aircraft.

(Pub. L. 85-726, title I, § 103, Aug. 23, 1958, 72 Stat. 740; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

REFERENCES IN TEXT

This chapter, referred to in text preceding subsec. (a), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

TRANSFER OF FUNCTIONS

In opening clause, "Secretary of Transportation" was substituted for "administrator" (meaning Administrator of the Federal Aviation Agency) pursuant to Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator

thereof under this section to the Secretary of Transportation. See section 1655(c)(1) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1655 of this title.

§ 1304. Public right of transit

There is recognized and declared to exist in behalf of any citizen of the United States a public right of freedom of transit through the navigable airspace of the United States.

(Pub. L. 85-726, title I, § 104, Aug. 23, 1958, 72 Stat. 740.)

SUBCHAPTER II—CIVIL AERONAUTICS BOARD; GENERAL POWERS

§ 1321. Agency of the United States

(a) Continuation; membership; removal of members; political affiliation; chairman

(1) The Civil Aeronautics Board, created and established under the name "Civil Aeronautics Authority" by section 421 of this title and redesignated as the "Civil Aeronautics Board" by Reorganization Plan No. IV of 1940, is continued as an agency of the United States, and shall continue to be composed of five members appointed by the President, by and with the advice and consent of the Senate, for terms of six years, beginning upon the expiration of the terms for which their predecessors were appointed, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term; but upon the expiration of his term of office a member shall continue to serve until his successor is appointed and shall have qualified.

(2) The members of the Board may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. No more than three of the members shall be appointed from the same political party. The President shall designate annually one of the members of the Board to serve as chairman and one of the members to serve as vice chairman, who shall act as chairman in the absence or incapacity of the chairman.

(b) Qualifications of members

The members of the Board shall be appointed with due regard to their fitness for the efficient dispatch of the powers and duties vested in and imposed upon the Board by this chapter. Each member of the Board shall be a citizen of the United States and no member of the Board shall have any pecuniary interest in or own any stock in or bonds of any civil aeronautics enterprise. No member of the Board shall engage in any other business, vocation, or employment.

(c) Quorum; principal office; seal

Three of the members shall constitute a quorum of the Board. The principal office of the Board shall be in the District of Columbia where its general sessions shall be held, but whenever the convenience of the public or of the parties may be promoted, or delay or expense may be prevented, the Board may hold hearings or other proceedings at any other place. The Board shall have an official seal which shall be judicially noticed and which shall be preserved in the custody of the secretary of the Board.

(Pub. L. 85-726, title II, § 201, Aug. 23, 1958, 72 Stat. 741; Pub. L. 88-426, title III, § 305(16)(A), Aug. 14, 1964, 78 Stat. 424.)

REFERENCES IN TEXT

Section 421 of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 85-726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806.

Reorganization Plan No. IV of 1940, referred to in subsec. (a)(1), means Reorg. Plan No. IV of 1940, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1234, which is set out in the Appendix to Title 5, Government Organization and Employees.

This chapter, referred to in subsec. (b), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

AMENDMENTS

1964—Subsec. (a). Pub. L. 88-426 repealed provisions in par. (2) which prescribed the salaries of the Chairman and members of the Board. See sections 5314(16) and 5315(54) of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-426 effective on the first day of the first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88-426, see section 501 of Pub. L. 88-426.

EFFECTIVE DATE

Subchapter effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now the Federal Aviation Administrator] first appointed under this chapter, qualified and took office [Oct. 31, 1958], see section 1505(2) of Pub. L. 85-726, set out as an Effective Date note under section 1301 of this title.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Civil Aeronautics Board and the Chairman, members, offices, and officers thereof under subchapters VI and VII of this chapter, were transferred to the Secretary of Transportation by Pub. L. 89-670, § 6(d), Oct. 15, 1966, 80 Stat. 937, to be exercised by the National Transportation Safety Board. See sections 1655(d) and 1903(a)(1)(A), (9) of this title.

STATUS OF MEMBERS, OFFICERS, AND EMPLOYEES OF CIVIL AERONAUTICS BOARD

Section 1503 of Pub. L. 85-726 provided that: "Nothing in this Act [see Short Title note set out under section 1301 of this title] (1) shall affect the tenure of office of any individual who is a member of the Civil Aeronautics Board at the time title IV of this Act [subchapter IV of this chapter] takes effect, or to nullify any action theretofore taken by the President in designating any such person as chairman or vice chairman of the Board, or (2) subject to section 1502(a) [set out as a note under section 1341 of this title], change the status of the officers and employees under the jurisdiction of the Board at that time."

CROSS REFERENCES

Compensation of chairman and members of Board, see sections 5314(16) and 5315(54) of Title 5, Government Organization and Employees.

§ 1322. Officers and employees

(a) Secretary of Board; secretaries and administrative assistants for members; other personnel

The Board is authorized, without regard to the civil-service and classification laws, to appoint and prescribe the duties and fix the compensation of a secretary of the Board, and to fix the compensation of a secretary and an administrative assistant for each member, and subject to the civil-service and classification laws, to select, employ, appoint, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary to carry out the provisions of this chapter, and to define their authority and duties.

(b) Repealed. Pub. L. 87-367, title I, § 103(2), Oct. 4, 1961, 75 Stat. 787

(c) Temporary personnel

The Board may, from time to time, without regard to the provisions of the civil-service laws, engage for temporary service such duly qualified consulting engineers or agencies, or other qualified persons as are necessary in the exercise and performance of the powers and duties of each, and fix the compensation of such engineers, agencies, or persons without regard to chapter 51 and subchapter III of chapter 53 of title 5, and the expenses of such employment shall be paid out of sums appropriated for the expenses of the Board.

(d) Cooperation with other Federal agencies

The Board is authorized to use, with their consent, the available services, equipment, personnel, and facilities of other civilian or military agencies and instrumentalities of the Federal Government, on a reimbursable basis when appropriate, and on a similar basis to cooperate with such other agencies and instrumentalities in the establishment and use of services, equipment, and facilities of the Board.

(Pub. L. 85-726, title II, § 202, Aug. 23, 1958, 72 Stat. 741; Pub. L. 87-367, title I, § 103(2), Oct. 4, 1961, 75 Stat. 787.)

REFERENCES IN TEXT

The civil-service laws, referred to in subsecs. (a) and (c), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

The classification laws, referred to in subsec. (a), are classified generally to chapter 51 (§ 5101 et seq.) and to subchapter III (§ 5331 et seq.) of chapter 53 of Title 5, Government Organization and Employees.

This chapter, referred to in subsec. (a), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

CODIFICATION

"Chapter 51 and subchapter III of chapter 53 of title 5" were substituted, in subsec. (c), for "the Classification Act of 1949, as amended" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1961—Subsec. (b). Pub. L. 87-367 repealed provision which authorized the Civil Aeronautics Board to place eight additional positions in grades 16, 17, and 18 of the General Schedule of the Classification Act of 1949.

SAVINGS CLAUSE

Positions existing prior to Oct. 4, 1961, compensation and appointments thereto unaffected by changes made by Pub. L. 87-367, and positions in grades 16, 17, and 18 of the General Schedule of the Classification Act of 1949 prior to Oct. 4, 1961, to remain in respective grades, until appropriate action was taken under title I of Pub. L. 87-367, see section 104 of Pub. L. 87-367.

PLACEMENT IN SALARY GRADE OF CERTAIN POSITIONS

Section 103(6) of Pub. L. 87-367 repealed such part of section 301 of Pub. L. 85-469, title III, June 25, 1958, 72 Stat. 237, which authorized the Chairman of the Civil Aeronautics Board to place one additional position in grade 18, two in grade 17 and seven in grade 16 of the General Schedule of the Classification Act of 1949.

§ 1323. Authorization of expenditures and travel

(a) Expenditures

The Board is empowered to make such expenditures at the seat of government and elsewhere as may be necessary for the exercise and performance of the powers and duties vested in and imposed upon the Board by law, and as from time to time may be appropriated for by Congress, including expenditures for (1) rent and personal services at the seat of government and elsewhere; (2) travel expenses; (3) office furniture, equipment and supplies, lawbooks, newspapers, periodicals, and books of reference (including the exchange thereof); (4) printing and binding; (5) membership in and cooperation with such organizations as are related to, or are part of, the civil-aeronautics industry or the art of aeronautics in the United States or in any foreign country; (6) making investigations and conducting studies in matters pertaining to aeronautics; and (7) acquisition (including exchange), operation, and maintenance of passenger-carrying automobiles and aircraft, and such other property as is necessary in the exercise and performance of the powers and duties of the Board: *Provided*, That no aircraft or motor vehicle purchased under the provisions of this section, shall be used otherwise than for official business.

(b) Travel

Travel by personnel of the United States Government on commercial aircraft, domestic or foreign, including travel between airports and centers of population or posts of duty when incidental to travel on commercial aircraft, shall be allowed at public expense when authorized or approved by competent authority, and transportation requests for such travel may be issued upon such authorizations. Such expense shall be allowed without regard to comparative costs of transportation by aircraft with other modes of transportation.

(c) Acceptance and disposal of gifts and donations

The Board, on behalf of the United States, is authorized to accept any gift or donation of money or personal property, or of services, where appropriate, for the purposes of its functions under subchapter VII of this chapter. For adequate compensation, by sale, lease, or otherwise, the Board, on behalf of the United States, is authorized to dispose of any such personal

property or interest therein: *Provided*, That such disposition shall be made in accordance with the Federal Property and Administrative Services Act of 1949, as amended [40 U.S.C. 471 et seq.].

(Pub. L. 85-726, title II, § 203, Aug. 23, 1958, 72 Stat. 742; Pub. L. 87-810, § 5, Oct. 15, 1962, 76 Stat. 921.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, as amended, referred to in subsec. (c), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Provisions of that act relating to disposal of government property are classified to chapter 10 (§ 471 et seq.) of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note under section 471 of Title 40 and Tables volume.

AMENDMENTS

1962—Subsec. (c). Pub. L. 87-810 added subsec. (c).

§ 1324. General powers and duties of the Board

(a) Performance of acts; conduct of investigations; orders, rules, regulations, and procedure

The Board is empowered to perform such acts, to conduct such investigations, to issue and amend such orders, and to make and amend such general or special rules, regulations, and procedure, pursuant to and consistent with the provisions of this chapter, as it shall deem necessary to carry out the provisions of, and to exercise and perform its powers and duties under, this chapter.

(b) Cooperation with State aeronautical agencies

The Board is empowered to confer with or to hold joint hearings with any State aeronautical agency, or other State agency, in connection with any matter arising under this chapter within its jurisdiction, and to avail itself of the cooperation, services, records, and facilities of such State agencies as fully as may be practicable in the administration and enforcement of this chapter.

(c) Exchange of information with foreign governments

The Board is empowered to exchange with foreign governments, through appropriate agencies of the United States, information pertaining to aeronautics.

(d) Report of proceedings and investigations; publication; evidence

Except as may be otherwise provided in this chapter, the Board shall make a report in writing in all proceedings and investigations under this chapter in which formal hearings have been held, and shall state in such report its conclusions together with its decision, order, or requirement in the premises. All such reports shall be entered of record and a copy thereof shall be furnished to all parties to the proceeding or investigation. The Board shall provide for the publication of such reports, and all other reports, orders, decisions, rules, and regulations issued by it under this chapter in such form and manner as may be best adapted for public information and use. Publications purporting to be published by the Board shall be competent evidence of the orders, decisions, rules, regulations, and reports of the Board therein contained in all courts of the United States, and of the several States, Territories, and possessions thereof, and the District of Columbia, without further proof or authentication thereof.

(Pub. L. 85-726, title II, § 204, Aug. 23, 1958, 72 Stat. 743.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), (d), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Civil Aeronautics Board and the Chairman, members, offices, and officers thereof under subchapters VI and VII of this chapter, were transferred to the Secretary of Transportation by Pub. L. 89-670, § 6(d), Oct. 15, 1966, 80 Stat. 937, to be exercised by the National Transportation Safety Board. See sections 1655(d) and 1903(a)(1)(A), (9) of this title.

All functions, powers, and duties of the Secretary of Commerce and other offices and officers of the Department of Commerce under Act Sept. 7, 1957, 71 Stat. 629, set out in the note below, relating generally to aircraft, were transferred to the Secretary of Transportation by Pub. L. 89-670, § 6(a)(3)(A) Oct. 15, 1966, 80 Stat. 937, which created the Department of Transportation. See section 1655(a)(3)(A) of this title.

GUARANTY OF LOANS FOR PURCHASE OF AIRCRAFT AND EQUIPMENT

Pub. L. 85-307, Sept. 7, 1957, 71 Stat. 629, as amended by Pub. L. 86-3, § 21, Mar. 18, 1959, 73 Stat. 13; Pub. L. 86-70, § 39, June 25, 1959, 73 Stat. 150; Pub. L. 86-624, § 37, July 12, 1960, 74 Stat. 421; Pub. L. 87-820, §§ 1-7, Oct. 15, 1962, 76 Stat. 936; Pub. L. 90-568, §§ 1, 2, Oct. 12, 1968, 82 Stat. 1003; Pub. L. 92-556, Oct. 25, 1972, 86 Stat. 1170, provided:

"[SEC. 1. DECLARATION OF POLICY]. That it is hereby declared to be the policy of Congress, in the interests of the commerce of the United States, the postal service, and the national defense to promote the development of local, feeder, and short-haul air transportation. In furtherance of this policy it is deemed necessary and desirable that provision be made to assist certain air carriers engaged in such air transportation by providing governmental guaranties of loans to enable them to purchase aircraft suitable for such transportation on reasonable terms.

"SEC. 2. [DEFINITIONS]. As used in this Act—

"(a) 'Secretary' means the Secretary of Commerce [now the Secretary of Transportation, see Transfer of Functions note set out above].

"(b) 'Aircraft purchase loan' means any loan, or commitment in connection therewith, made for the purchase of a commercial transport aircraft, including spare parts normally associated therewith.

"SEC. 3. [ELIGIBLE LENDERS]. The Secretary is hereby authorized to guarantee any lender against loss of principal or interest on any aircraft purchase loan made by such lender to any air carrier holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board (a) designated therein to be for local or feeder air service, or (b) providing for operations wholly within the State of Hawaii, or (c) providing for operations (the major portion of which are conducted either within Alaska or between Alaska and the forty-eight contiguous States) within the State of Alaska (including service between Alaska and the forty-eight contiguous States, and between Alaska and adjacent Canadian territory), or (d) providing for operations with the Commonwealth of Puerto Rico (including service to the Virgin Islands and the Dominican Republic), or (e) providing for operations between

Florida and the British West Indies (including service to Cuba), or (f) for the purpose of authorizing metropolitan helicopter service. Such guaranty shall be made in such form, on such terms and conditions, and pursuant to such regulations, as the Secretary deems necessary and which are not inconsistent with the provisions of this Act.

"SEC. 4. [RESTRICTIONS]. No guaranty shall be made:

"(a) Extending to more than the unpaid interest and 90 percent of the unpaid principal of any loan.

"(b) on any loan or combination of loans for more than 90 percent of the purchase price of the aircraft, including spare parts, to be purchased therewith.

"(c) On any loan whose terms permit full repayment more than 10 years after the date thereof.

"(d) Wherein the total face amount of such loan, and of any other loans to the same carrier, or corporate predecessor carrier or carriers, guaranteed and outstanding under the terms of this Act exceed $30,000,000.

"(e) Unless the Secretary finds that, without such guaranty, in the amount thereof, the air carrier would be unable to obtain necessary funds for the purchase of needed aircraft on reasonable terms.

"(f) Unless the Secretary finds that the aircraft to be purchased with the guaranteed loan is needed to improve the service and efficiency of operation of the air carrier.

"(g) Unless the Secretary finds that the prospective earning power of the applicant air carrier, together with the character and value of the security pledged, furnish (1) reasonable assurances of the applicant's ability to repay the loan within the time fixed therefor, and (2) reasonable protection to the United States.

"SEC. 5. [FEE]. The Secretary shall prescribe and collect from the lending institution a reasonable guaranty fee in connection with each loan guaranteed under this Act.

"SEC. 6. [COOPERATION WITH OTHER AGENCIES]. (a) To permit him to make use of such expert advice and services as he may require in carrying out the provisions of this Act, the Secretary may use available services and facilities of other agencies and instrumentalities of the Federal Government with their consent and on a reimbursable basis.

"(b) Departments and agencies of the Federal Government shall exercise their powers, duties, and functions in such manner as will assist in carrying out the objectives of this Act.

"(c) The Secretary shall make available to the Comptroller General of the United States such information with respect to the loan guaranty program under this Act as the Comptroller General may require to carry out his duties under the Budget and Accounting Act, 1921 [31 U.S.C. 1 et seq.].

"SEC. 7. [RECEIPTS, AUTHORIZATION OF APPROPRIATION, EXPENSES]. (a) Receipts under this Act shall be credited to miscellaneous receipts of the Treasury.

"(b) Payments to lenders required as a consequence of any guaranty under this Act may be made from funds which are hereby authorized to be appropriated to the Department of Commerce for that purpose.

"(c) Administrative expenses under this Act shall be paid from appropriations to the Department of Commerce for administrative expenses.

"SEC. 8. [EFFECTIVE AND TERMINATION DATES]. This Act shall become effective upon enactment [Sept. 7, 1957], and the authority contained in section 3 hereof shall expire twenty years thereafter."

Provisions respecting loans and financial aid inapplicable to guaranty of loans by the Secretary under Pub. L. 85-307, set out above, but consultation of the Secretary with and consideration of views and recommendations of the Board in making the guarantees, see section 1380 of this title.

GUARANTY OF LOANS FOR PURCHASE OF AIRCRAFT AND EQUIPMENT; ORDERS, ETC., EFFECTIVE UNTIL TERMINATED; PENDING PROCEEDINGS AND PRIOR SUITS UNAFFECTED; TRANSFER OF PERSONNEL AND EQUIPMENT

Pub. L. 87-820, §§ 9, 10, Oct. 15, 1962, 76 Stat. 936, provided:

"SEC. 9. (a) All orders, determinations, rules, regulations, permissions, approvals, agreements, rulings, directives, and privileges which have been issued, made, or granted, or allowed to become effective, by the Civil Aeronautics Board, or any court of competent jurisdiction, under any provision of law amended by this Act [amending note set out above and section 1380 of this title], or in the exercise of duties, powers, or functions which, under this Act, are vested in the Secretary of Commerce [now Secretary of Transportation, see Transfer of Functions note set out above], and which are in effect on the date of enactment of this Act [Oct. 15, 1962] shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Secretary of Commerce [now Secretary of Transportation] or by any court of competent jurisdiction, or by operation of law.

"(b) The provisions of this Act [amending Pub. L. 85-307, Sept. 7, 1957, 71 Stat. 629 note set out above and section 1380 of this title] shall not affect any proceedings pending before the Civil Aeronautics Board on the date of enactment of this Act [Oct. 15, 1962]; but any such proceedings shall be continued before the Secretary of Commerce [now Secretary of Transportation], orders issued therein, and payments made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Secretary of Commerce, or by operation of law.

"(c) The provisions of this Act [amending Pub. L. 85-307, Sept. 7, 1957, 71 Stat. 629 note set out above and section 1380 of this title] shall not affect suits commenced prior to the date of its enactment [Oct. 15, 1962]; and all such suits shall be continued by the Secretary of Commerce [now Secretary of Transportation], proceedings therein had, appeals therein taken, and judgments therein rendered, in the same manner and with the same effect as if this Act had not been enacted. No suit, action, or other proceeding lawfully commenced by or against the Civil Aeronautics Board or officer of the United States, in relation to the discharge of official duties, shall abate by reason of any transfer of authority, power, or duties from the Board or officer to the Secretary of Commerce [now Secretary of Transportation], under the provisions of this Act, but the court upon a motion or a supplemental petition filed at any time within twelve months after such transfer, showing the necessity for a survival of such suit, action, or other proceeding to obtain a settlement of the questions involved, may allow the same to be maintained by or against the Secretary of Commerce [now Secretary of Transportation].

"SEC. 10. (a) The officers, employees, and property (including office equipment and official records) of the Civil Aeronautics Board which the Bureau of the Budget [now Office of Management and Budget], after consultation with the Board, shall determine to have been employed by the Board in the exercise and performance of those powers and duties vested in and imposed upon it by the Act of September 7, 1957 (71 Stat. 629), as in effect on the day before the date of enactment of this Act [Oct. 15, 1962], and which are vested by this Act [amending Pub. L. 85-307, Sept. 7, 1957, 71 Stat. 629 note set out above and section 1380 of this title] in the Secretary of Commerce [now Secretary of Transportation], shall be transferred to the Department of Commerce [now Department of Transportation] upon such date or dates as the Bureau of the Budget [now Office of Management and Budget] shall specify. The transfer of personnel under this section shall be without reduction in classified or compensation, except that this requirement shall not operate after the end of the fiscal year during which such transfer is made to prevent the adjustment of

classification or compensation to conform to the duties to which such transferred personnel may be assigned.

"(b) All records transferred to the Secretary of Commerce [now Secretary of Transportation] under this Act [amending note set out above and section 1380 of this title] shall be available for use by him to the same extent as if such records were originally records of the Secretary."

REORGANIZATION PLAN NO. 3 OF 1961

Eff. July 3, 1961, 26 F.R. 5989, 75 Stat. 837

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 3, 1961, pursuant to the provisions of the Reorganization Act of 1949, as amended [see section 901 et seq. of Title 5, Government Organization and Employees].

CIVIL AERONAUTICS BOARD

SECTION 1. AUTHORITY TO DELEGATE

(a) In addition to its existing authority, the Civil Aeronautics Board, hereinafter referred to as the "Board", shall have the authority to delegate, by published order or rule, any of its functions to a division of the Board, an individual Board member, a hearing examiner, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter: *Provided, however,* That nothing herein contained shall be deemed to supersede the provisions of section 7(a) of the Administrative Procedure Act (60 Stat. 241), as amended [now section 556 of Title 5, Government Organization and Employees].

(b) With respect to the delegation of any of its functions, as provided in subsection (a) of this section, the Board shall retain a discretionary right to review the action of any such division of the Board, individual Board member, hearing examiner, employee or employee board, upon its own initiative or upon petition of a party to or an intervenor in such action, within such time and in such manner as the Board shall by rule prescribe: *Provided, however,* That the vote of a majority of the Board less one member thereof shall be sufficient to bring any such action before the Board for review.

(c) Should the right to exercise such discretionary review be declined, or should no such review be sought within the time stated in the rules promulgated by the Board, then the action of any such division of the Board, individual Board member, hearing examiner, employee or employee board, shall, for all purposes, including appeal or review thereof, be deemed to be the action of the Board.

SEC. 2. TRANSFER OF FUNCTIONS TO THE CHAIRMAN

In addition to the functions transferred by the provisions of Reorganization Plan No. 13 of 1950 (64 Stat. 1266) [set out in the Appendix to Title 5, Government Organization and Employees], there are hereby transferred from the Board to the Chairman of the Board the functions of the Board with respect to the assignment of Board personnel, including Board members, to perform such functions as may have been delegated by the Board to Board personnel, including Board members, pursuant to section 1 of this reorganization plan.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 3 of 1961, prepared in accordance with the Reorganization Act of 1949, as amended, and providing for reorganization in the Civil Aeronautics Board.

This Reorganization Plan No. 3 of 1961 follows upon my message of April 13, 1961, to the Congress of the United States. It is believed that the taking effect of the reorganizations included in this plan will provide for greater efficiency in the dispatch of the business of the Civil Aeronautics Board.

The plan provides for greater flexibility in the handling of the business before the Board, permitting its disposition at different levels so as better to promote its efficient dispatch. Thus matters both of an adjudicatory and regulatory nature may, depending upon their importance and their complexity, be finally consummated by divisions of the Board, individual Board members, hearing examiners, and, subject to the provisions of section 7(a) of the Administrative Procedure Act of 1946 (60 Stat. 241), by other employees. This will relieve the Board members from the necessity of dealing with many matters of lesser importance and thus conserve their time for the consideration of major matters of policy and planning. There is, however, reserved to the Board as a whole the right to review any such decision, report, or certification either upon its own initiative or upon the petition of a party or intervenor demonstrating to the satisfaction of the Board the desirability of having the matter reviewed at the top level.

Provision is also made, in order to maintain the fundamental bipartisan concept explicit in the basic statute creating the Board, for mandatory review of any such decision, report, or certification upon the vote of a majority of the Board less one member.

Inasmuch as the assignment of delegated functions in particular cases and with reference to particular problems to divisions of the Board, to Board members, to hearing examiners, to employees and boards of employees must require continuous and flexible handling, depending both upon the amount and nature of the business, that function is placed in the Chairman by section 2 of the plan.

By providing sound organizational arrangements, the taking effect of the reorganizations included in the accompanying reorganization plan will make possible more economical and expeditious administration of the affected functions. It is, however, impracticable to itemize at this time the reductions of expenditures which it is probable will be brought about by such taking effect.

After investigation, I have found and hereby declare that each reorganization included in the reorganization plan transmitted herewith is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended.

I recommend that the Congress allow the reorganization plan to become effective.

JOHN F. KENNEDY.

THE WHITE HOUSE, May 3, 1961.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to the Civil Aeronautics Board, see Parts 1, 15, and 30 of Ex. Ord. No. 11490, eff. Oct. 28, 1969, 34 F.R. 17567, set out as a note under section 2292 of Title 50, Appendix, War and National Defense.

CROSS REFERENCES

Enforcement under this chapter by Civil Aeronautics Board of requirements imposed under section 1601 et seq. of Title 15, Commerce and Trade, see section 1607 of Title 15.

§ 1325. Annual report to Congress

The Board shall make an annual report to the Congress, copies of which shall be distributed as are other reports transmitted to Congress. Such report shall contain in addition to a report of the work performed under this chapter, such information and data collected by the Board as may be considered of value in the determination of questions connected with the development and regulation of civil aeronautics, together with such recommendations as to additional legislation relating thereto as the Board may deem necessary, and the Board may

also transmit recommendations as to legislation at any other time.

(Pub. L. 85-726, title II, § 205, Aug. 23, 1958, 72 Stat. 744.)

REFERENCES IN TEXT

This chapter, referred to in text, read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Civil Aeronautics Board and the Chairman, members, offices, and officers thereof under subchapters VI and VII of this chapter were transferred to the Secretary of Transportation by Pub. L. 89-670, § 6(d), Oct. 15, 1966, 80 Stat. 937, to be exercised by the National Transportation Safety Board. See sections 1655(d) and 1903(a)(1)(A), (9) of this title.

SUBCHAPTER III—ORGANIZATION OF ADMINISTRATION; POWERS AND DUTIES OF ADMINISTRATOR

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1471, 1472, 1481 of this title.

§ 1341. Federal Aviation Administration

(a) Establishment; Administrator; appointment; powers and duties

There is established the Federal Aviation Administration, referred to in this chapter as the "Administration". The Administration shall be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall be responsible for the exercise of all powers and the discharge of all duties of the Administration, and shall have authority and control over all personnel and activities thereof. In the exercise of his duties and the discharge of his responsibilities under this chapter, the Administrator shall not submit his decisions for the approval of, nor be bound by the decisions or recommendations of, any committee, board, or other organization created by Executive order.

(b) Qualifications of Administrator

The Administrator shall be a citizen of the United States, and shall be appointed with due regard for his fitness for the efficient discharge of the powers and duties vested in and imposed upon him by this chapter. At the time of his nomination he shall be a civilian and shall have had experience in a field directly related to aviation. The Administrator shall have no pecuniary interest in or own any stock in or bonds of any aeronautical enterprise nor shall he engage in any other business, vocation, or employment.

(c) Principal office; seal

The principal office of the Administration shall be in or near the District of Columbia, but it may act and exercise all its powers at any other place. The Administration shall have an official seal which shall be judicially noticed.

(Pub. L. 85-726, title III, § 301, Aug. 23, 1958, 72 Stat. 744; Pub. L. 88-426, title III, § 305(16)(B), Aug. 14, 1964, 78 Stat. 424; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

AMENDMENTS

1964—Subsec. (a). Pub. L. 88-426 repealed provisions which prescribed the salary of the Administrator. See section 5313(19) of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-426 effective on the first day of the first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88-426, see section 501 of Pub. L. 88-426.

EFFECTIVE DATE

Section effective Aug. 23, 1958, see section 1505(1) of Pub. L. 85-726, set out as an Effective Date note under section 1301 of this title.

TRANSFER OF FUNCTIONS

"Federal Aviation Administration", in subsec. (a), and "Administration", in subsecs. (a) to (c), were substituted for "Federal Aviation Agency" and "Agency" pursuant to Pub. L. 89-670, §§ 3(e), 6(c)(1), Oct. 15, 1966, 80 Stat. 932, 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation and established a Federal Aviation Administration in the Department of Transportation. See sections 1652(e) and 1655(c)(1) of this title.

TRANSFER OF PERSONNEL, PROPERTY, AND APPROPRIATIONS

Section 1502 of Pub. L. 85-726 provided that:

"(a) The officers, employees, and property (including office equipment and official records) of the Civil Aeronautics Administration of the Department of Commerce, and of the Airways Modernization Board, and such employees and property (including office equipment and official records) as the President, after consultation with the Civil Aeronautics Board, shall determine to have been employed by the Civil Aeronautics Board in the exercise and performance of those powers and duties vested in and imposed upon it by the Civil Aeronautics Act of 1938, as amended [49 U.S.C. 401 et seq.], and which are vested by this Act [this chapter] in the Agency, shall be transferred to the Agency upon such date or dates as the President shall specify: *Provided*, That the transfer of such personnel shall be without reduction in classification or compensation, except that this requirement shall not operate after the end of the fiscal year during which such transfer is made to prevent the adjustment of classification or compensation to conform to the duties to which such transferred personnel may be assigned.

"(b) Such of the unexpended balances of appropriations available for use by the Civil Aeronautics Administration of the Department of Commerce and by the Airways Modernization Board, and such of the unexpended balances of appropriations available for use by the Civil Aeronautics Board in the exercise and performance of those powers and duties vested in and imposed upon it by the Civil Aeronautics Act of 1938, as amended [49 U.S.C. 401 et seq.], and which are vested by this Act [this chapter] in the Administrator, shall be transferred to the Agency upon such date or dates as the President shall specify, and shall be available for use in connection with the exercise and per-

formance of the powers and duties vested in and imposed upon the Administrator by this Act [this chapter]. Where provisions of this Act [this chapter] which are to be administered by the Board are in substance reenactments (with or without modifications) of provisions of the Civil Aeronautics Act of 1938, as amended [49 U.S.C. 401 et seq.], administered by the Board at the time this section takes effect, the Board, in carrying out such provisions of this Act [this chapter], may utilize unexpended balances of appropriations made for carrying out such provisions of the Civil Aeronautics Act of 1938, as amended [49 U.S.C. 401 et seq.].

"(c) All records transferred to the Administrator under this Act [this chapter] shall be available for use by him to the same extent as if such records were originally records of the Administrator."

DELEGATION OF AUTHORITY

Delegation of authority to Director of the Bureau of the Budget [now Office of Management and Budget] and transfer of records and property, see Ex. Ord. No. 10797, set out as a note under section 1345 of this title.

APPOINTMENT OF RETIRED AIR FORCE OFFICER AS ADMINISTRATOR

Pub. L. 89–46, June 22, 1965, 79 Stat. 171, provided: "That, notwithstanding the provisions of section 301(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1341(b)), or any other provision of law, the President, acting by and with the advice and consent of the Senate, is authorized to appoint General William F. McKee (United States Air Force, retired) to the office of Administrator of the Federal Aviation Agency [now the Federal Aviation Administration]. General McKee's appointment to, acceptance of, and service in that office shall in no way affect any status, rank, or grade he may occupy or hold in the United States Air Force or any component thereof, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade: *Provided*, That so long as he holds the office of Administrator of the Federal Aviation Agency [now Federal Aviation Administration], he shall receive the compensation of that office at the rate specified in the Federal Executive Salary Act of 1964 (title III of the Act of August 14, 1964, Public Law 88–426) [now covered by section 5313 of Title 5, Government Organization and Employees] and shall retain the rank and grade which he now holds as an officer on the retired list of the Regular Air Force, and shall in addition continue to receive the retired pay to which he is entitled by law, subject to the provisions of the Dual Compensation Act (the Act of August 19, 1964, Public Law 88–448) [now covered by section 5531 et seq. of title 5].

"SEC. 2. In the performance of his duties as Administrator of the Federal Aviation Agency [now Federal Aviation Administration], General McKee shall be subject to no supervision, control, restriction, or prohibition (military or otherwise) other than would be operative with respect to him if he were not an officer on the retired list of the Regular Air Force.

"SEC. 3. It is hereby expressed as the intent of the Congress that the authority granted by this Act is not to be construed as approval by the Congress of continuing appointments of military men to the office of Administrator of the Federal Aviation Agency [now Federal Aviation Administration] in the future."

QUALIFICATIONS OF THE ADMINISTRATOR OF THE FEDERAL AVIATION AGENCY APPLICABLE TO ADMINISTRATOR OF FEDERAL AVIATION ADMINISTRATION

Applicability of qualifications set out in subsec. (b) of this section for the Administrator of the Federal Aviation Agency to the Administrator of the Federal Aviation Administration as created by Pub. L. 89–670, see section 1652 of this title.

CROSS REFERENCES

Compensation of Administrator, see section 5313(19) of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1652 of this title.

§ 1342. Deputy Administrator; appointment; powers and duties; qualifications

(a) There shall be a Deputy Administrator of the Administration who shall be appointed by the President by and with the advice and consent of the Senate. The Deputy Administrator shall perform such duties and exercise such powers as the Administrator shall prescribe. The Deputy Administrator shall act for, and exercise the powers of, the Administrator during his absence or disability.

(b) The Deputy Administrator shall be a citizen of the United States, and shall be appointed with due regard for his fitness for the efficient discharge of the powers and duties vested in and imposed upon him by this chapter. At the time of his nomination he shall have had experience in a field directly related to aviation. He shall have no pecuniary interest in nor own any stocks in or bonds of any aeronautical enterprise, nor shall he engage in any other business, vocation, or employment. Nothing in this chapter or other law shall preclude appointment to the position of Deputy Administrator of an officer on active duty with the armed services; except that if the Administrator is a former regular officer of any one of the armed services, the Deputy Administrator shall not be an officer on active duty with one of the armed services or a retired regular officer or a former regular officer of one of the armed services. Any officer on active duty or any retired officer, while serving as Deputy Administrator, shall continue to hold rank and grade not lower than that in which serving at the time of his appointment as Deputy Administrator, and shall be entitled to receive (1) the compensation provided for the Deputy Administrator, or (2) the military pay and allowances (including personal money allowance) or the retired pay, as the case may be, payable to a commissioned officer of his grade and length of service, whichever he may elect. Whenever any officer serving as Deputy Administrator elects to receive his military pay and allowances (including personal money allowance), or his retired pay, as the case may be, the appropriate department shall be reimbursed from any funds available to defray the expenses of the Administration.

(Pub. L. 85–726, title III, § 302(a), (b), Aug. 23, 1958, 72 Stat. 744; Pub. L. 88–426, title III, § 305(16)(C), Aug. 14, 1964, 78 Stat. 424; Pub. L. 89–670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 932.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), read in the original, "this Act", meaning Pub. L. 85–726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

CODIFICATION

Section is comprised of subsecs. (a) and (b) of section 302 of Pub. L. 85–726. Remainder of such section 302 is classified to section 1343 of this title.

In subsec. (b)(1), the words "by subsection (a) of this section" following "the compensation provided for the Deputy Administrator" were deleted because the pro-

visions relating to such compensation in subsec. (a) were eliminated by Pub. L. 88-426.

AMENDMENTS

1964—Subsec. (a). Pub. L. 88-426 repealed provisions which prescribed the salary of the Deputy Administrator. See section 5315(80) of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-426 effective on the first day of the first pay period which begins on or after July 1, 1964, except to the extent provided in section 501(c) of Pub. L. 88-426, see section 501 of Pub. L. 88-426.

EFFECTIVE DATE

Section effective Aug. 23, 1958, see section 1505(1) of Pub. L. 85-726, set out as an Effective Date note under section 1301 of this title.

TRANSFER OF FUNCTIONS

"Administration" was substituted in text for "Agency" pursuant to Pub. L. 89-670, §§ 3(e), 6(c)(1), Oct. 15, 1966, 80 Stat. 932, 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation and established a Federal Aviation Administration in the Department of Transportation. See sections 1652(e) and 1655(c)(1) of this title.

QUALIFICATIONS AND STATUS OF DEPUTY ADMINISTRATOR OF THE FEDERAL AVIATION AGENCY APPLICABLE TO DEPUTY ADMINISTRATOR OF THE FEDERAL AVIATION ADMINISTRATION

Applicability of qualifications and status set out in subsec. (b) of this section for the Deputy Administrator of the Federal Aviation Agency to the Deputy Administrator of the Federal Aviation Administration as created by Pub. L. 89-670, see section 1652 of this title.

CROSS REFERENCES

Compensation of Deputy Administrator, see section 5315(80) of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1652 of this title.

§ 1343. General powers and duties of Secretary of Transportation

(a) Military participation; detail of members of Armed Forces

(1) In order to insure that the interests of national defense are properly safeguarded and that the Secretary of Transportation is properly advised as to the needs and special problems of the armed services, the Secretary of Transportation shall provide for participation of military personnel in carrying out his functions relating to regulation and protection of air traffic, including provision of air navigation facilities, and research and development with respect thereto, and the allocation of airspace. Members of the Army, the Navy, the Air Force, the Marine Corps, or the Coast Guard may be detailed by the appropriate Secretary, pursuant to cooperative agreements with the Secretary of Transportation, including such agreement on reimbursement as may be deemed advisable by the Secretary of Transportation and the Secretary concerned, for service in the Administration to effect such participation.

(2) Appointment to, acceptance of, and service as Deputy Administrator or under such cooperative agreements shall in no way affect status, office, rank, or grade which commissioned officers or enlisted men may occupy or hold, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade. No person so detailed or appointed shall be subject to direction by or control by the department from which detailed or appointed or by any agency or officer thereof directly or indirectly with respect to his responsibilities under this chapter or within the Administration.

(b) Exchange of information

In order to assist the Secretary of Transportation further in the discharge of responsibilities under this chapter, the Secretary of Transportation and the Secretary of Defense, and the Secretary of Transportation and the Administrator of the National Aeronautics and Space Administration, are directed to establish by cooperative agreement suitable arrangements for the timely exchange of information pertaining to their programs, policies, and requirements directly relating to such responsibilities.

(c) Development of plans for discharge of responsibilities in event of war; legislative proposal; transfer of functions

The Secretary of Transportation shall develop, in consultation with the Department of Defense and other affected Government agencies, plans for the effective discharge of the responsibilities of the Administration in the event of war, and shall propose to Congress on or before January 1, 1960, legislation for such purpose: *Provided*, That in the event of war the President by Executive order may transfer to the Department of Defense any functions (including powers, duties, activities, facilities, and parts of functions) of the Administration prior to enactment of such proposed legislation. In connection with any such transfer, the President may provide for appropriate transfers of records, property, and personnel.

(d) Officers and employees

The Secretary of Transportation is authorized, subject to the civil-service and classification laws, to select, employ, appoint, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary to carry out the provisions of this chapter, and to define their authority and duties, except that the Secretary of Transportation may fix the compensation for not more than twenty-three positions at rates not to exceed the highest rate of grade 18 of the General Schedule.

(e) Omitted

(f) Scientific or professional personnel

The Secretary of Transportation is authorized to establish and fix the compensation for not to exceed twenty positions of officers and employees of the Administration of a scientific or professional nature without regard to chapter 51 and subchapter III of chapter 53 of title 5, each such position being established to effectuate those research, development, and related activites of the Administration which require the services of specially qualified scientific or

professional personnel. The rates of basic compensation for positions established pursuant to this subsection shall not exceed the maximum rate payable under section 5361 of title 5, and shall be subject to the approval of the Civil Service Commission. Positions created pursuant to this subsection shall be included in the classified civil service of the United States, but appointment to such positions shall be made without competitive examination upon approval of the proposed appointee's qualifications by the Civil Service Commission or such officers or agents as it may designate for this purpose.

(g) Advisory committees and consultants

The Secretary of Transportation is authorized to appoint such advisory committees as shall be appropriate for the purpose of consultation with and advice to the Administration in performance of its functions hereunder and to obtain services authorized by section 3109 of title 5, at rates not to exceed $100 per diem for individuals, and for not to exceed one hundred days in any calendar year in the case of any individual. Members of such committees shall be entitled to travel expenses and per diem as authorized by section 5703 of title 5, for all persons employed intermittently as consultants or experts receiving compensation on a per diem basis.

(h) Repealed. Pub. L. 87-367, title I, § 103(2), Oct. 4, 1961, 75 Stat. 787

(i) Cooperation with other agencies

The Secretary of Transportation is authorized to use with their consent the available services, equipment, personnel, and facilities of other civilian or military agencies and instrumentalities of the Federal Government, on a reimbursable basis when appropriate, and on a similar basis to cooperate with such other agencies and instrumentalities in the establishment and use of services, equipment, and facilities of the Administration. The Secretary of Transportation is further authorized to confer with and avail himself of the cooperation, services, records, and facilities of State, Territorial, municipal or other local agencies.

(Pub. L. 85-726, title III, § 302(c)-(k), Aug. 23, 1958, 72 Stat. 745; Pub. L. 87-367, title I, § 103(2), title II, § 205, Oct. 4, 1961, 75 Stat. 787, 791; Pub. L. 87-793, § 1001(h), Oct. 11, 1962, 76 Stat. 864; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966; 80 Stat. 937; Pub. L. 93-608, § 1(20), Jan. 2, 1975, 88 Stat. 1970.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (d), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

The civil-service laws, referred to in subsec. (d), are classified generally to Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

The classification laws, referred to in subsec. (d), are classified generally to chapter 51(§ 5101 et seq.) and to subchapter III (§ 5331 et seq.) of chapter 53 of Title 5.

The General Schedule, referred to in subsec. (d), is set out under section 5332 of Title 5.

CODIFICATION

In subsec. (f), "chapter 51 and subchapter III of chapter 53 of title 5" were substituted for "the Classification Act of 1949, as amended" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

In subsec. (f), "section 5361 of title 5" was substituted for "the Act of August 1, 1947 (Public Law 313, Eightieth Congress), as amended, and Title V of the Act of July 31, 1956 (Public Law 854, Eighty-fourth Congress)" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5. Prior to the enactment of Title 5, the Act of August 1, 1947, was amended generally by section 2 of Pub. L. 87-378, Oct. 4, 1961, 75 Stat. 789.

In subsec. (g), "section 3109 of title 5" and "section 5703 of title 5" were substituted, for "section 15 of the Administrative Expenses Act of 1946 (5 U.S.C. 55a)" and "the Administrative Expenses Act of 1946 (5 U.S.C. 73b-2)", respectively, on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5.

Section is comprised of subsecs. (c) to (k) of section 302 of Pub. L. 85-726, which have been designated as subsecs. (a) to (i) of this section, respectively, for purposes of codification. Remainder of section 302 is classified to section 1342 of this title.

Subsection (e) of this section, which required the Administrator to make a special study of personnel problems with due regard to the need for (1) special qualifications and training, (2) special provisions as to pay, retirement, and hours of service, and (3) special provisions to assure availability, responsiveness, and security status of essential personnel in fulfilling national defense requirements and make a report to the Congress on or before Jan. 1, 1960, was omitted as executed.

AMENDMENTS

1975—Subsec. (a)(3). Pub. L. 93-608 repealed subsec. (a)(3), which set forth reporting requirements for agreements relating to the detail of members of the armed services.

1962—Subsec. (d). Pub. L. 87-793 substituted "not to exceed the highest rate of grade 18 of the General Schedule" for "not to exceed $19,500 per annum".

1961—Subsec. (d). Pub. L. 87-367, § 205(b), authorized the Administrator of the Federal Aviation Agency to increase the number of persons employed at $19,500 per annum from 10 to 23.

Subsec. (f). Pub. L. 87-367, § 205(a), authorized the Administrator of the Federal Aviation Agency to increase the number of scientific and professional positions from 15 to 20.

Subsec. (h). Pub. L. 87-367, § 103(2), repealed provision which authorized Administrator of the Federal Aviation Agency to place additional positions in grades 16, 17, and 18 of the General Schedule, now set out in section 5332 of Title 5.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-793 effective on the first day of the first pay period which begins on or after Oct. 11, 1962, see section 1008 of Pub. L. 87-793.

EFFECTIVE DATE

Subsecs. (a), (d), (g) and (i) of this section effective August 23, 1958, see section 1505(1) of Pub. L. 85-726, set out as an Effective Date note under section 1301 of this title.

Subsecs. (b), (c), (e), (f), and (h) of this section effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now the Federal Aviation Administrator] first appointed under this chapter qualified and took office [Oct. 31, 1958], see section 1505(2) of Pub. L. 85-726, set out as an Effective Date note under section 1301 of this title.

SAVINGS CLAUSE

Positions existing prior to Oct. 4, 1961, compensation and appointments thereto unaffected by changes made by Pub. L. 87-367 and positions in grades 16, 17, and 18 of the General Schedule of the Classification Act of 1949 prior to Oct. 4, 1961, to remain in respective grades, until appropriate action was taken under title I of Pub. L. 87-367, see section 104 of Pub. L. 87-367.

TRANSFER OF FUNCTIONS

The Coast Guard was transferred to the Department of Transportation, and all functions, powers, and duties relating to the Coast Guard of the Secretary of the Treasury and of all other officers and offices of the Department of the Treasury were transferred to the Secretary of Transportation by Pub. L. 89-670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89-670, however, provided that notwithstanding such transfer of functions, the Coast Guard shall operate as part of the Navy in time of war or when the President directs as provided in section 3 of Title 14, Coast Guard. See section 1655(b) of this title.

"Secretary of Transportation" was substituted for "Administrator" (meaning Administrator of the Federal Aviation Agency) pursuant to Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator thereof under this section to the Secretary of Transportation. See section 1655(c)(1) of this title.

"Administration" was substituted, in subsecs. (a), (c), (f), (g), and (i), for "Agency" pursuant to Pub. L. 89-670, §§ 3(e), 6(c)(1), Oct. 15, 1966, 80 Stat. 932, 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation and established a Federal Aviation Administration in the Department of Transportation. See sections 1652(e) and 1655(c)(1) of this title.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

The transfer of functions from the Federal Aviation Agency to the Secretary of Transportation by Pub. L. 89-670 not to affect the power of the President under subsec. (c) of this section to transfer to the Department of Defense in the event of war any functions transferred by Pub. L. 89-670 from the Federal Aviation Agency, see section 1655 of this title.

APPLICABILITY OF SECTION 1(a) OF REORGANIZATION PLAN NO. 5 OF 1950

Section 1401(c) of Pub. L. 85-726 provided in part that no function vested in the Administrator by Pub. L. 85-726, shall hereafter be subject to the provisions of section 1(a) of Reorganization Plan No. 5 of 1950.

PLACEMENT IN SALARY GRADE OF CERTAIN POSITIONS

Section 103(15) of Pub. L. 87-367 repealed such part of section 101 of Pub. L. 85-469, title I, June 25, 1958, 72 Stat. 228, which authorized the Administrator of the Federal Aviation Agency to place one additional position in grade 18, two in grade 17 and seven in grade 16 of the General Schedule, set out under section 5332 of Title 5, Government Organization and Employees.

TERMINATION OF ADVISORY COMMITTEES

Advisory Committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory Committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

EX. ORD. NO. 11161. TRANSFER OF FEDERAL AVIATION AGENCY TO DEFENSE DEPARTMENT IN EVENT OF WAR

Ex. Ord. No. 11161, eff. July 7, 1964, 29 F.R. 9317, as amended by Ex. Ord. No. 11382, eff. Nov. 28, 1967, 32 F.R. 16247, provided:

WHEREAS Section 302(e) of the Federal Aviation Act of 1958 [subsec. (c) of this section] provides, in part, that in the event of war the President by Executive order may transfer to the Department of Defense any functions (including powers, duties, activities, facilities, and parts of functions) of the Federal Aviation Administration; and

WHEREAS it appears that the defense of the United States would require the transfer of the Federal Aviation Administration to the Department of Defense in the event of war; and

WHEREAS if any such transfer were to be made it would be essential to the defense of the United States that the transition be accomplished promptly and with maximum ease and effectiveness; and

WHEREAS these objectives require that the relationships that would obtain in the event of such a transfer as between the Federal Aviation Administration and the Department of Defense be understood in advance by the two agencies concerned and be developed in necessary detail by them in advance of transfer:

NOW, THEREFORE, by virtue of the authority vested in me by Section 302(e) (72 Stat. 746; 49 U.S.C. 1343(c)) [subsec. (c) of this section], and as President of the United States and Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

Section 1. The Secretary of Defense and the Secretary of Transportation are hereby directed to prepare and develop plans, procedures, policies, programs, and courses of action in anticipation of the probable transfer of the Federal Aviation Administration to the Department of Defense in the event of war. Those plans, policies, procedures, programs, and courses of action shall be prepared and developed in conformity with the following-described standards and conditions—

(A) The Federal Aviation Administration will function as an adjunct of the Department of Defense with the Federal Aviation Administrator being responsible directly to the Secretary of Defense and subject to his authority, direction, and control to the extent deemed by the Secretary to be necessary for the discharge of his responsibilities as Secretary of Defense.

(B) To the extent deemed by the Secretary of Defense to be necessary for the accomplishment of the military mission, he will be empowered to direct the Administrator to place operational elements of the Federal Aviation Administration under the direct operational control of appropriate military commanders.

(C) While functioning as an adjunct of the Department of Defense, the Federal Aviation Administration will remain organizationally intact and the Administrator thereof will retain responsibility for administration of his statutory functions, subject to the authority, direction, and control of the Secretary of Defense to the extent deemed by the Secretary to be necessary for the discharge of his responsibilities as Secretary of Defense.

Sec. 2. In furtherance of the objectives of the foregoing provisions of this order, the Secretary of Defense and the Secretary of Transportation shall, to the extent permitted by law, make such arrangements and take such actions as they deem necessary to assure—

(A) That the functions of the Federal Aviation Administration are performed during any period of na-

tional emergency short of war in a manner that will assure that essential national defense requirements will be satisfied during any such period of national emergency.

(B) Consistent with the provisions of paragraphs (A), (B), and (C) of Section 1 of this order, that any transfer of the Federal Aviation Administration to the Department of Defense, in the event of war, will be accomplished smoothly and rapidly and effective operation of the agencies and functions affected by the transfer will be achieved after the transfer.

LYNDON B. JOHNSON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1655 of this title.

§ 1344. Administration

(a) Authorization of expenditures and travel

The Secretary of Transportation is empowered to make such expenditures at the seat of government and elsewhere as may be necessary for the exercise and performance of the powers and duties vested in and imposed upon him by law, and as from time to time may be appropriated for by Congress, including expenditures for (1) rent and personal services at the seat of government and elsewhere; (2) travel expenses; (3) office furniture, equipment and supplies, lawbooks, newspapers, periodicals, and books of reference (including the exchange thereof); (4) printing and binding; (5) membership in and cooperation with such organizations as are related to, or are part of, the civil aeronautics industry or the art of aeronautics in the United States or in any foreign country; (6) payment of allowances and other benefits to employees stationed in foreign countries to the same extent as authorized from time to time for members of the Foreign Service of the United States of comparable grade; (7) making investigations and conducting studies in matters pertaining to aeronautics; and (8) acquisition (including exchange), operation and maintenance of passenger-carrying automobiles and aircraft, and such other property as is necessary in the exercise and performance of the powers and duties of the Secretary of Transportation: *Provided*, That no aircraft or motor vehicles, purchased under the provisions of this section, shall be used otherwise than for official business.

(b) Supplies and materials for overseas installations

When appropriations for any fiscal year for the Administration have not been made prior to the first day of March preceding the beginning of such fiscal year, the Secretary of Transportation may authorize such officer or officers as may be designated by him to incur obligations for the purchase and transportation of supplies and materials necessary to the proper execution of the Secretary of Transportation's functions at installations outside the continental United States, including those in Alaska, in amounts not to exceed 75 per centum of the amount that had been made available for such purposes for the fiscal year then current, payments of these obligations to be made from the appropriations for the next succeeding fiscal year when they become available.

(c) Acquisition and disposal of property

The Secretary of Transportation, on behalf of the United States, is authorized, where appropriate: (1) to accept any conditional or unconditional gift or donation of money or other property, real or personal, or of services; (2) within the limits of available appropriations made by the Congress therefor, to acquire by purchase, condemnation, lease, or otherwise, real property or interests therein, including, in the case of air navigation facilities (including airports) owned by the United States and operated under the direction of the Secretary of Transportation, easements through or other interests in airspace immediately adjacent thereto and needed in connection therewith: *Provided*, That the authority herein granted shall not include authority for the acquisition of space in buildings for use by the Federal Aviation Administration, suitable accommodations for which shall be provided by the Administrator of General Services, unless the Administrator of General Services determines, pursuant to section 1(d) of Reorganization Plan Numbered 18, 1950 (64 Stat. 1270), that the space to be acquired is to be utilized for the special purposes of the Federal Aviation Administration and is not generally suitable for the use of other agencies; (3) for adequate compensation, by sale, lease, or otherwise, to dispose of any real or personal property or interest therein: *Provided*, That, except for airport and airway property and technical equipment used for the special purposes of the Administration, such disposition shall be made in accordance with the Federal Property and Administrative Services Act of 1949, as amended [40 U.S.C. 471 et seq.]; and (4) to construct, improve, or renovate laboratories and other test facilities and to purchase or otherwise acquire real property required therefor. Any such acquisition by condemnation may be made in accordance with the provisions of the Act of August 1, 1888 (40 U.S.C. 257; 25 Stat. 357), the Act of February 26, 1931 (40 U.S.C. 258a-258e; 46 Stat. 1421), or any other applicable Act: *Provided*, That in the case of condemnations of easements through or other interests in airspace, in fixing condemnation awards, consideration may be given to the reasonable probable future use of the underlying land.

(d) Delegation of functions

The Secretary of Transportation may, subject to such regulations, supervision, and review as he may prescribe, from time to time make such provision as he shall deem appropriate authorizing the performance by any officer, employee, or administrative unit under his jurisdiction of any function under this chapter; or, with its consent, authorizing the performance by any other Federal department or agency of any function under section 1348(b) of this title.

(e) Negotiation of purchases and contracts; report to Congressional Committees

The Secretary of Transportation may negotiate without advertising purchases of and contracts for technical or special property related to, or in support of, air navigation that he determines to require a substantial initial investment or an extended period of preparation for manufacture, and for which he determines that

formal advertising would be likely to result in additonal cost to the Government by reason of duplication of investment or would result in duplication of necessary preparation which would unduly delay the procurement of the property. The Secretary shall, at the beginning of each fiscal year, report to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate all transactions negotiated under this subsection during the preceding fiscal year.

(Pub. L. 85–726, title III, § 303, Aug. 23, 1958, 72 Stat. 747; Pub. L. 89–670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937; Pub. L. 91–258, title I, § 51(a)(1), May 21, 1970, 84 Stat. 234; Pub. L. 94–353, title I, § 16, July 12, 1976, 90 Stat. 882; S. Res. 4, Feb. 4, 1977.)

REFERENCES IN TEXT

Reorganization Plan Numbered 18, 1950, referred to in subsec. (c), is Reorg. Plan No. 18 of 1950, eff. July 1, 1950, 15 F.R. 3177, 64 Stat. 1270, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Federal Property and Administrative Services Act of 1949, as amended, referred to in subsec. (c), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Provisions of that act relating to disposal of government property are classified to chapter 10 (§ 471 et seq.) of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note under section 471 of Title 40 and Tables volume.

This chapter, referred to in subsec. (d), read in the original, "this Act", meaning Pub. L. 85–726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

AMENDMENTS

1976—Subsec. (e). Pub. L. 94–353 substituted "Public Works and Transportation" for "Interstate and Foreign Commerce".

1970—Subsec. (e). Pub. L. 91–258 added subsec. (e).

CHANGE OF NAME

The Committee on Commerce of the Senate was abolished and replaced by the Committee on Commerce, Science, and Transportation, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

EFFECTIVE DATE

Subsec. (a) of this section effective Aug. 23, 1958, see section 1505(1) of Pub. L. 85–726, set out as an Effective Date note under section 1301 of this title.

Subsecs. (b) to (d) of this section effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now the Federal Aviation Administrator] first appointed under this chapter qualified and took office [Oct. 31, 1958], see section 1505(2) of Pub. L. 85–726, set out as an Effective Date note under section 1301 of this title.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted, in subsecs. (a) to (d), for "Administrator" (meaning Administrator of the Federal Aviation Agency) pursuant to Pub. L. 89–670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator thereof under this section to the Secretary of Transportation. See section 1655(c)(1) of this title.

"Administration", in subsec. (b), and "Federal Aviation Administration", in subsec. (c), were substituted for "Agency" and "Federal Aviation Agency", respectively, pursuant to Pub. L. 89–670, §§ 3(e), 6(c)(1), Oct. 15, 1966, 80 Stat. 932, 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation and established a Federal Aviation Administration in the Department of Transportation. See sections 1652(e) and 1655(c)(1) of this title.

§ 1345. Presidential authority to transfer certain functions

The President may transfer to the Secretary of Transportation any functions (including powers, duties, activities, facilities, and parts of functions) of the executive departments or agencies of the Government or of any officer or organizational entity thereof which relate primarily to selecting, developing, testing, evaluating, establishing, operating and maintaining systems, procedures, facilities, or devices for safe and efficient air navigation and air traffic control. In connection with any such transfer, the President may provide for appropriate transfers of recrods, property, and for necessary civilian and military personnel to be made available from the other office, department, or other agency from which the transfer is made.

(Pub. L. 85–726, title III, § 304, Aug. 23, 1958, 72 Stat. 749; Pub. L. 89–670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

EFFECTIVE DATE

Section effective Aug. 23, 1958, see section 1505(1) of Pub. L. 85–726, set out as an Effective Date note under section 1301 of this title.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Administrator" (meaning Administrator of the Federal Aviation Agency) pursuant to Pub. L. 89–670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator thereof under this section to the Secretary of Transportation. See section 1655(c)(1) of this title.

EX. ORD. NO. 10786. TRANSFER OF FUNCTIONS OF THE AIRWAYS MODERNIZATION BOARD TO THE ADMINISTRATOR

Ex. Ord. No. 10786, Nov. 1, 1958, 23 F.R. 8573, provided:

SECTION 1. All functions (including powers, duties, activities, and parts of functions) of the Airways Modernization Board, including those of the Chairman thereof, are hereby transferred to the Administrator of the Federal Aviation Agency; and all records, property, facilities, employees, and unexpended balances of appropriations, allocations, and other funds of the Airways Modernization Board, are hereby transferred to the Federal Aviation Agency [now Federal Aviation Administration].

SEC. 2. Such further measures and dispositions, if any, as the Director of the Bureau of the Budget [now the Office of Management and Budget] shall determine to be necessary in connection with the transfers provided for hereinabove in respect of records, property, facilities, employees, and balances shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

SEC. 3. The provisions of this order shall become effective concurrently with the entering upon office as Administrator of the Federal Aviation Agency [now Federal Aviation Administration] of the first person appointed as Administrator. The functions transferred

by section 1 hereof may be performed by the Administrator until the effective date of the repeal [Aug. 23, 1958] of the Airways Modernization Act of 1957 [section 1211 et seq. of this title] effected by section 1401(d) of the Federal Aviation Act of 1958.

DWIGHT D. EISENHOWER.

EX. ORD. NO. 10797. DELEGATION OF AUTHORITY TO THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET

Ex. Ord. No. 10797, Dec. 24, 1958, 23 F.R. 10391, provided:

SECTION 1. There is hereby delegated to the Director of the Bureau of the Budget [now the Office of Management and Budget] all authority vested in the President by the last sentence of section 304 [this section], and by sections 1502(a) and 1502(b) [set out as a note under section 1341 of this title], of the Federal Aviation Act of 1958 (72 Stat. 749, 810), relating, respectively, (1) to providing in connection with transfers of functions made under other provisions of section 304 [this section], (i) for appropriate transfers of records and property, and (ii) for necessary civilian and military personnel to be made available from any office, department, or other agency from which transfers of functions are so made; (2) to determining the employees and property (including office equipment and official equipment and official records) employed by the Civil Aeronautics Board in the exercise and performance of those powers and duties which are vested in and imposed upon it by the Civil Aeronautics Act of 1938, as amended [see section 401 et seq. of this title], and which are vested by the Federal Aviation Act of 1958 [this chapter] in the Federal Aviation Agency, and to specifying the date or dates upon which the transfers of officers, employees, and property (including office equipment and official records) under section 1502(a) [set out as a note under section 1341 of this title] shall occur; and (3) specifying the date or dates upon which transfers of unexpended balances of appropriations under section 1502(b) [set out as a note under section 1341 of this title] shall occur. Such further measures and dispositions as the Director of the Bureau of the Budget [now the Office of Management and Budget] shall determine to be necessary in connection with the exercise of the authority delegated to him by this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

SEC. 2. Executive Order No. 10731 of October 10, 1957, delegating to the Director of the Bureau of the Budget [now the Office of Management and Budget] the authority vested in the President by a certain provision of the Airways Modernization Act of 1957 [section 1211 et seq. of this title], is hereby revoked, such revocation to become effective on the date the repeal of that act takes effect under sections 1401(d) [see note under sections 1211 to 1215 of this title] and 1505(2) [set out as a note under section 1301 of this title] of the Federal Aviation Act of 1958 (72 Stat. 806, 811).

SEC. 3. Except as otherwise provided in section 2 hereof, the provisions of this order shall become effective immediately.

DWIGHT D. EISENHOWER.

EX. ORD. NO. 11047. DELEGATION OF AUTHORITY TO SECRETARY OF DEFENSE AND ADMINISTRATOR

Ex. Ord. No. 11047, Aug. 28, 1962, 27 F.R. 8665, provided:

By the virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. The Secretary of Defense and the Administrator of the Federal Aviation Agency [now Federal Aviation Administration] are hereby designated and empowered to exercise jointly, without the approval, ratification, or other action of the President, the authority vested in the President by the first sentence of section 304 of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1345 (first sentence)) [this section] to transfer functions (including, as used in this order, powers, duties, activities, facilities, and parts of functions) as described in that sentence to the extent that the said authority is in respect of transfers from the Department of Defense or any officer or organizational entity thereof to the Administrator of the Federal Aviation Agency [now Federal Aviation Administration] of functions relating to flight inspection of air navigation facilities.

SEC. 2. The Administrator and the Secretary shall exercise the authority hereinabove delegated to them only as they shall deem such exercise to be necessary or desirable in the interest of promoting, in respect of either civil or military aviation or both, safe and efficient air navigation and air traffic control.

SEC. 3. (a) To the extent necessitated by transfers of functions effected under the provisions of Section 1 of this order:

(1) Transfers of balances of appropriations available and necessary to finance and discharge the transferred functions shall be made under the authority of Section 202(b) of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c(b)) as affected by the provisions of section 1(k) of Executive Order No. 10530 of May 10, 1954 [set out as a note under section 301 of Title 3, The President].

(2) Provisions for appropriate transfers of records and property shall be made under the authority of the last sentence of Section 304 of the Federal Aviation Act of 1958 [this section] as affected by the provisions of Section 1 of Executive Order No. 10797 of December 24, 1958 [set out as a note above].

(b) Neither this order nor the said Executive Order No. 10797 shall be deemed to require or authorize the transfer of any civilian or military personnel from the Department of Defense to the Federal Aviation Agency, under authority of the said Section 304 [this section], in connection with transfers of functions effected under the provisons of Section 1 of this order.

SEC. 4. (a) In order to facilitate the orderly and timely accomplishment of the transfers and other arrangements mentioned in Section 3(a) of this order, the Secretary of Defense and the Administrator of the Federal Aviation Agency shall transmit to the Director of the Bureau of the Budget, not less than 30 days prior to the execution by them of any order or other transfer instrument in pursuance of the provisions of Section 1 of this order, all appropriate information in respect to any transfers or other arrangements proposed to be made in connection therewith under the provisions of Section 3 hereof, together with copy of the order or other transfer instrument proposed to be executed by them.

(b) In connection with any particular action or actions under Section 1 of this order, the Director of the Bureau of the Budget [now Office of Management and Budget] may either waive the requirements of Section 4(a), above, or reduce the 30 day period there prescribed.

JOHN F. KENNEDY.

§ 1346. Fostering of civil aeronautics and air commerce

The Secretary of Transportation is empowered and directed to encourage and foster the development of civil aeronautics and air commerce in the United States and abroad.

(Pub. L. 85–726, title III, § 305. Aug. 23, 1958, 72 Stat. 749; Pub. L. 89–670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

EFFECTIVE DATE

Section effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now the Federal Aviation Administrator] first appointed under this chapter qualified and took office [Oct. 31, 1958], see section 1505(2) of Pub. L. 85–726,

set out as an Effective Date note under section 1301 of this title.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Administrator" (meaning Administrator of the Federal Aviation Agency) pursuant to Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator thereof under this section to the Secretary of Transportation. See section 1655(c)(1) of this title.

§ 1346a. Civil aviation information distribution program

In furtherance of his mandate to promote civil aviation, the Secretary of Transportation acting through the Administrator of the Federal Aviation Administration shall take such action as he may deem necessary, within available resources, to establish a civil aviation information distribution program within each region of the Federal Aviation Administration. Such program shall be designed so as to provide State and local school administrators, college and university officials, and officers of civil and other interested organizations, upon request, with informational materials and expertise on various aspects of civil aviation.

(Pub. L. 94-353, title I, § 21, July 12, 1976, 90 Stat. 884.)

CODIFICATION

Section was enacted as part of Pub. L. 94-353, known as the Airport and Airway Development Act Amendments of 1976, and not as part of Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958, which comprises this chapter.

§ 1347. National defense and civil needs

In exercising the authority granted in, and discharging the duties imposed by, this chapter, the Secretary of Transportation shall give full consideration to the requirements of national defense, and of commercial and general aviation, and to the public right of freedom of transit through the navigable airspace.

(Pub. L. 85-726, title III, § 306, Aug. 23, 1958, 72 Stat. 749; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

REFERENCES IN TEXT

This chapter, referred to in text, read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

EFFECTIVE DATE

Section effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now the Federal Aviation Administrator] first appointed under this chapter qualified and took office [Oct. 31, 1958], see section 1505(2) of Pub. L. 85-726, set out as an Effective Date note under section 1301 of this title.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under this section to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1655 of this title.

§ 1348. Airspace control and facilities

(a) Use of airspace

The Secretary of Transportation is authorized and directed to develop plans for and formulate policy with respect to the use of the navigable airspace; and assign by rule, regulation, or order the use of the navigable airspace under such terms, conditions, and limitations as he may deem necessary in order to insure the safety of aircraft and the efficient utilization of such airspace. He may modify or revoke such assignment when required in the public interest.

(b) Air navigation facilities

The Secretary of Transportation is authorized, within the limits of available appropriations made by the Congress, (1) to acquire, establish, and improve air-navigation facilities wherever necessary; (2) to operate and maintain such air-navigation facilities; (3) to arrange for publication of aeronautical maps and charts necessary for the safe and efficient movement of aircraft in air navigation utilizing the facilities and assistance of existing agencies of the Government so far as practicable; and (4) to provide necessary facilities and personnel for the regulation and protection of air traffic.

(c) Air traffic rules

The Secretary of Transportation is further authorized and directed to prescribe air traffic rules and regulations governing the flight of aircraft, for the navigation, protection, and identification of aircraft, for the protection of persons and property on the ground, and for the efficient utilization of the navigable airspace, including rules as to safe altitudes of flight and rules for the prevention of collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects.

(d) Applicability of administrative procedure provisions

In the exercise of the rulemaking authority under subsections (a) and (c) of this section, the Secretary of Transportation shall be subject to the provisions of subchapter II of chapter 5 of title 5, notwithstanding any exception relating to military or naval functions in section 553 of title 5.

(e) Exemptions

The Secretary of Transportation from time to time may grant exemptions from the requirements of any rule or regulation prescribed under this subchapter if he finds that such action would be in the public interest.

(f) Exception for military emergencies

When it is essential to the defense of the United States because of a military emergency or urgent military necessity, and when appro-

priate military authority so determines, and when prior notice thereof is given to the Secretary of Transportation, such military authority may authorize deviation by military aircraft of the national defense forces of the United States from air traffic rules issued pursuant to this subchapter. Such prior notice shall be given to the Secretary of Transportation at the earliest time practicable and, to the extent time and circumstances permit, every reasonable effort shall be made to consult fully with the Secretary of Transportation and to arrange in advance for the required deviation from the rules on a mutually acceptable basis.

(Pub. L. 85-726, title III, § 307, Aug. 23, 1958, 72 Stat. 749; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

CODIFICATION

In subsec. (d), "subchapter II of chapter 5 of title 5" was substituted for "the Administrative Procedure Act" and "section 553 of title 5" was substituted for "section 4 thereof" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now the Federal Aviation Administrator] first appointed under this chapter qualified and took office [Oct. 31, 1958], see section 1505(2) of Pub. L. 85-726, set out as an Effective Date note under section 1301 of this title.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted in text for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under this section to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

FLIGHT SERVICE STATIONS; CLOSURES OR REMOTE CONTROL OPERATION

Pub. L. 94-353, title I, § 22, July 12, 1976, 90 Stat. 884, provided that: "For the three year period beginning on the date of enactment of this Act [July 12, 1976], the Secretary of Transportation shall not close or operate by remote control any existing flight service station operated by the Federal Aviation Administration, except (A) for part-time operation by remote control during low-activity periods, and (B) for the purpose of demonstrating the quality and effectiveness of service at a consolidated flight service station facility, not more than five flight service stations, at the discretion of the Secretary, may be closed or operated by remote control from not more than one air route traffic control center. Nothing in this section shall preclude the physical separation of a combined flight service station and tower facility, the operation by remote control of the flight service station portion of a combined flight service station and tower facility from another flight service station, or the relocation of an existing flight service station at another site within the same flight service area if such flight service station continues to provide the same service to airmen without interruption."

CROSS REFERENCES

National security to be considered in exercise of powers under subsec. (a) of this section, see section 1522 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1344, 1349, 1350, 1522, 1655, 1714 of this title.

§ 1349. Expenditure of Federal funds for certain airports and air navigation facilities; location of airports, landing areas, and missile and rocket sites

(a) No Federal funds, other than those expended under this chapter, shall be expended, other than for military purposes (whether or not in cooperation with State or other local governmental agencies), for the acquisition, establishment, construction, alteration, repair, maintenance, or operation of any landing area, or for the acquisition, establishment, construction, maintenance, or operation of air navigation facilities thereon, except upon written recommendation and certification by the Secretary of Transportation that such landing area or facility is reasonably necessary for use in air commerce or in the interests of national defense. Any interested person may apply to the Secretary of Transportation, under regulations prescribed by him, for such recommendation and certification with respect to any landing area or air navigation facility proposed to be established, constructed, altered, repaired, maintained, or operated by, or in the interests of, such person. There shall be no exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended.

(b) In order to assure conformity to plans and policies for allocations of airspace by the Secretary of Transportation under section 1348 of this title, no military airport or landing area, or missile or rocket site shall be acquired, established, or constructed, or any runway layout substantially altered, unless reasonable prior notice thereof is given the Secretary of Transportation so that he may advise with the appropriate committees of the Congress and other interested agencies as to the effects of such acquisition, establishment, construction, or alteration on the use of airspace by aircraft. In case of a disagreement between the Secretary of Transportation and the Department of Defense or the National Aeronautics and Space Administration the matter may be appealed to the President for final determination.

(Pub. L. 85-726, title III, § 308, Aug. 23, 1958, 72 Stat. 750; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

EFFECTIVE DATE

Section effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now the Federal Aviation Administrator] first appointed under this chapter qualified and took office [Oct. 31, 1958], see section 1505(2) of Pub. L. 85-726,

set out as an Effective Date note under section 1301 of this title.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted in text for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under this section to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1655 of this title.

§ 1350. Establishment or construction of airports and landing areas not involving expenditure of Federal funds

In order to assure conformity to plans and policies for, and allocations of, airspace by the Secretary of Transportation under section 1348 of this title, no airport or landing area not involving expenditure of Federal funds shall be established, or constructed, or any runway layout substantially altered unless reasonable prior notice thereof is given the Secretary of Transportation, pursuant to regulations prescribed by him, so that he may advise as to the effects of such construction on the use of airspace by aircraft.

(Pub. L. 85-726, title III, § 309, Aug. 23, 1958, 72 Stat. 751; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

EFFECTIVE DATE

Section effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now the Federal Aviation Administrator] first appointed under this chapter qualified and took office [Oct. 31, 1958], see section 1505(2) of Pub. L. 85-726, set out as an Effective Date note under section 1301 of this title.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under this section to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1655 of this title.

§ 1351. Meteorological service

The Secretary of Transportation is empowered and directed to make recommendations to the Secretary of Commerce for providing meteorological service necessary for the safe and efficient movement of aircraft in air commerce. In providing meteorological services, the Secretary of Commerce shall cooperate with the Secretary of Transportation and give full consideration to such recommendations.

(Pub. L. 85-726, title III, § 310, Aug. 23, 1958, 72 Stat. 751; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

EFFECTIVE DATE

Section effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now the Federal Aviation Administrator] first appointed under this chapter qualified and took office [Oct. 31, 1958], see section 1505(2) of Pub. L. 85-726, set out as an Effective Date note under section 1301 of this title.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Administrator" (meaning Administrator of the Federal Aviation Agency) pursuant to Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator thereof under this section to the Secretary of Transportation. See section 1655(c)(1) of this title.

§ 1352. Collection and dissemination of information

The Secretary of Transportation is empowered and directed to collect and disseminate information relative to civil aeronautics (other than information collected and disseminated by the Board under subchapters IV and VII of this chapter); to study the possibilities of the development of air commerce and the aeronautical industry; and to exchange with foreign governments, through appropriate governmental channels, information pertaining to civil aeronautics.

(Pub. L. 85-726, title III, § 311, Aug. 23, 1958, 72 Stat. 751; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

REFERENCES IN TEXT

Information collected and disseminated by the "Board" under subchapter IV of this chapter has reference to the Civil Aeronautics Board, and information collected and disseminated by the "Board" under subchapter VII of this chapter has reference to the National Transportation Safety Board. See sections 1655(d) and 1903(a)(1)(A) of this title.

EFFECTIVE DATE

Section effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now the Federal Aviation Administrator] first appointed under this chapter qualified and took office [Oct. 31, 1958], see section 1505(2) of Pub. L. 85-726, set out as an Effective Date note under section 1301 of this title.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Administrator" (meaning Administrator of the Federal Aviation Agency) pursuant to Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator thereof under this section to the Secretary of Transportation. See section 1655(c)(1) of this title.

§ 1353. Development planning

(a) Use of navigable airspace; location of landing areas, Federal airways, radar installations, and air navigation facilities

The Secretary of Transportation is directed to make long range plans for and formulate policy with respect to the orderly development and use of the navigable airspace, and the orderly development and location of landing areas, Federal airways, radar installations and all other aids and facilities for air navigation, as will best meet the needs of, and serve the interest of civil aeronautics and national defense, except for those needs of military agencies which are peculiar to air warfare and primarily of military concern.

(b) Aircraft, aircraft engines, propellers, and appliances

The Secretary of Transportation is empowered to undertake or supervise such developmental work and service testing as tends to the creation of improved aircraft, aircraft engines, propellers, and appliances. For such purpose, the Secretary of Transportation is empowered to make purchases (including exchange) by negotiation, or otherwise, of experimental aircraft, aircraft engines, propellers, and appliances, which seem to offer special advantages to aeronautics.

(c) Research and development

The Secretary of Transportation shall develop, modify, test, and evaluate systems, procedures, facilities, and devices, as well as define the performance characteristics thereof, to meet the needs for safe and efficient navigation and traffic control of all civil and military aviation except for those needs of military agencies which are peculiar to air warfare and primarily of military concern, and select such systems, procedures, facilities, and devices as will best serve such needs and will promote maximum coordination of air traffic control and air defense systems. Contracts may be entered into for this purpose without regard to section 529 of title 31. When there is any substantial question as to whether a matter is of primary concern to the military, the Secretary of Transportation is authorized and directed to determine whether he or the appropriate military agency shall have responsibility. Technical information concerning any research and development projects of the military agencies which have potential application to the needs of, or possible conflict with, the common system shall be furnished to the Secretary of Transportation to the maximum extent necessary to insure that common system application potential is properly considered and potential future conflicts with the common system are eliminated.

(Pub. L. 85-726, title III, § 312, Aug. 23, 1958, 72 Stat. 752; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

EFFECTIVE DATE

Section effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now the Federal Aviation Administrator] first appointed under this chapter qualified and took office [Oct. 31, 1958], see section 1505(2) of Pub. L. 85-726, set out as an Effective Date note under section 1301 of this title.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted in text for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under this section to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1714 of this title.

§ 1354. Other powers and duties of Secretary of Transportation

(a) Generally

The Secretary of Transportation is empowered to perform such acts, to conduct such investigations, to issue and amend such orders, and to make and amend such general or special rules, regulations, and procedures, pursuant to and consistent with the provisions of this chapter, as he shall deem necessary to carry out the provisions of, and to exercise and perform his powers and duties under, this chapter.

(b) Report of proceedings and investigations; publication of reports, orders, decisions, rules and regulations; use as evidence

Except as may be otherwise provided in this chapter, the Secretary of Transportation shall make a report in writing on all proceedings and investigations under this chapter in which formal hearings have been held, and shall state in such report his conclusions together with his decision, order, or requirement in the premises. All such reports shall be entered of record and a copy thereof shall be furnished to all parties to the proceeding or investigation. The Secretary of Transportation shall provide for the publication of such reports, and all other reports, orders, decisions, rules, and regulations issued by him under this chapter in such form and manner as may be best adapted for public information and use. Publications purporting to be published by the Secretary of Transportation shall be competent evidence of the orders, decisions, rules, regulations, and reports of the Administrator therein contained in all courts of the United States, and of the several States, Territories, and possessions thereof, and the District of Columbia, without further proof or authentication thereof.

(c) Power to conduct hearings and investigations

In the conduct of any public hearings or investigations authorized by this chapter, the Federal Airport Act [49 U.S.C. 1101 et seq.], or the Airport and Airway Development Act of 1970 [49 U.S.C. 1701 et seq.], the Secretary of Transportation shall have the same powers to take evidence, issue subpenas, take depositions, and compel testimony as are vested in members of the Board and its duly designated examiners by section 1484 of this title. Actions of the Secretary of Transportation in such cases shall be governed by the procedures specified in section

1484 of this title and be enforced in the manner provided therein.

(d) Training schools

The Secretary of Transportation is empowered to conduct a school or schools for the purpose of training employees of the Administration in those subjects necessary for the proper performance of all authorized functions of the Administration. He may also authorize attendance at courses given in such school or schools of other governmental personnel, and personnel of foreign governments, or personnel of the aeronautics industry: *Provided*, That in the event the attendance of such persons shall increase the cost of operation of such school or schools, the Secretary of Transportation may require the payment or transfer of sufficient funds or other appropriate consideration to offset the additional costs. In providing any training to employees of the Administration or of other agencies of the Federal Government, the Secretary of Transportation shall be subject to the provisions of Chapter 41 of title 5. Funds received by the Secretary of Transportation hereunder may be credited (1) to appropriations current at the time the expenditures are to be or have been paid, (2) to appropriations current at the time such funds are received, or (3) in part as provided under clause (1) and in part as provided under clause (2).

(e) Annual report to the President and Congress

The Secretary of Transportation shall submit to the President and to the Congress an annual report. Such report shall contain, in addition to a report of the work performed under this chapter, such information and data collected by the Secretary of Transportation as may be considered of value in the determination of questions connected with the development and regulation of civil aeronautics, the utilization of national airspace, and the improvement of the air navigation and traffic control system, together with such recommendations as to additional legislation related thereto as the Secretary of Transportation may deem necessary, and the Secretary of Transportation may also transmit recommendations as to legislation at any other time.

(Pub. L. 85-726, title III, § 313, Aug. 23, 1958, 72 Stat. 752; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937; Pub. L. 91-258, title I, § 52(b)(4)(A), May 21, 1970, 84 Stat. 235.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), (c), and (e), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

The Federal Airport Act, referred to in subsec. (c), is act May 13, 1946, ch. 251, 60 Stat. 170, as amended, which was classified to chapter 14 (§ 1101 et seq.) of this title. The Act was repealed by section 52(a) of the Airport and Airway Development Act of 1970 (Pub. L. 91-258, title I, May 21, 1970, 84 Stat. 235), and is now covered by chapter 25 (§ 1701 et seq.) of this title.

The Airport and Airway Development Act of 1970, referred to in subsec. (d), is Pub. L. 91-258, title I, May 21, 1970, 84 Stat. 219, as amended, and is classified principally to chapter 25 (§ 1701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables volume.

CODIFICATION

In subsec. (d), "chapter 41 of title 5" was substituted for "the Government Employees Training Act (72 Stat. 327)" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1970—Subsec. (c). Pub. L. 91-258 inserted reference to the Airport and Airway Development Act of 1970.

EFFECTIVE DATE

Section effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now the Federal Aviation Administrator] first appointed under this chapter qualified and took office [Oct. 31, 1958], see section 1505(2) of Pub. L. 85-726, set out as an Effective Date note under section 1301 of this title.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted in text for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under this section to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

"Administration" was substituted, in subsec. (d), for "Agency" pursuant to Pub. L. 89-670, §§ 3(e), 6(c)(1), Oct. 15, 1966, 80 Stat. 932, 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation and established a Federal Aviation Administration in the Department of Transportation. See sections 1652(e) and 1655(c)(1) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1655 of this title.

§ 1355. Delegation of powers and duties to private persons; application for reconsideration

(a) In exercising the powers and duties vested in him by this chapter, the Secretary of Transportation may, subject to such regulations, supervision, and review as he may prescribe, delegate to any properly qualified private person, or to any employee or employees under the supervision of such person, any work, business, or function respecting (1) the examination inspection, and testing necessary to the issuance of certificates under subchapter VI of this chapter, and (2) the issuance of such certificates in accordance with standards established by him. The Secretary of Transportation may establish the maximum fees which such private persons may charge for their services and may rescind any delegation made by him pursuant to this subsection at any time and for any reason which he deems appropriate.

(b) Any person affected by any action taken by any private person exercising delegated authority under this section may apply for reconsideration of such action by the Secretary of Transportation. The Secretary of Transporta-

tion upon his own initiative, with respect to the authority granted under subsection (a) of this section, may reconsider the action of any private person either before or after it has become effective. If, upon reconsideration by the Secretary of Transportation, it shall appear that the action in question is in any respect unjust or unwarranted, the Secretary of Transportation shall reverse, change, or modify the same accordingly; otherwise such action shall be affirmed: *Provided*, That nothing in this subsection shall be construed as modifying, amending, or repealing any provisions of subchapter II of chapter 5, and chapter 7, of title 5.

(Pub. L. 85–726, title III, § 314, Aug. 23, 1958, 72 Stat. 754; Pub. L. 89–670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), read in the original "this Act", meaning Pub. L. 85–726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

CODIFICATION

In subsec. (b), "subchapter II of chapter 5, and chapter 7, of title 5" was substituted for "the Administrative Procedure Act" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now the Federal Aviation Administrator] first appointed under this chapter qualified and took office [Oct. 31, 1958], see section 1505(2) of Pub. L. 85–726, set out as an Effective Date note under section 1301 of this title.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89–670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation, pertaining to aviation safety under this section to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1655 of this title.

§ 1356. Screening procedures for passengers; promulgation and amendment of regulations by Administrator; reports to Congress; exempted air transportation operations.

(a) The Administrator shall prescribe or continue in effect reasonable regulations requiring that all passengers and all property intended to be carried in the aircraft cabin in air transportation or intrastate air transportation be screened by weapon-detecting procedures or facilities employed or operated by employees or agents of the air carrier, intrastate air carrier, or foreign air carrier prior to boarding the aircraft for such transportation. One year after August 5, 1974, or after the effective date of such regulations, whichever is later, the Administrator may alter or amend such regulations, requiring a continuation of such screening only to the extent deemed necessary to assure security against acts of criminal violence and aircraft piracy in air transportation and intrastate air transportation. The Administrator shall submit semiannual reports to the Congress concerning the effectiveness of screening procedures under this subsection and shall advise the Congress of any regulations or amendments thereto to be prescribed pursuant to this subsection at least 30 days in advance of their effective date, unless he determines that an emergency exists which requires that such regulations or amendments take effect in less than 30 days and notifies the Congress of his determination.

(b) The Administrator may exempt from the provisions of this section, in whole or in part, air transportation operations, other than those scheduled passenger operations performed by air carriers engaging in interstate, overseas, or foreign air transportation under a certificate of public convenience and necessity issued by the Civil Aeronautics Board under section 1371 of this title or under a foreign air carrier permit issued by the Board under section 1372 of this title.

(Pub. L. 85–726, title III, § 315, as added Pub. L. 93–366, title II, § 202, Aug. 5, 1974, 88 Stat. 415.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1356a, 1358, 1511 of this title.

§ 1356a. Security measures in foreign air transportation

(a) Compensation of air carriers

The Secretary of Transportation shall compensate any air carrier certificated by the Civil Aeronautics Board under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371) which requests such compensation for that portion of the amount expended by such air carrier for security screening facilities and procedures as required by section 315(a) of such Act (49 U.S.C. 1356(a)), and any regulation issued pursuant thereto, which is attributable to the screening of passengers moving in foreign air transportation. An air carrier shall have any compensation authorized to be paid it under this section reduced by the amount (if any) by which the revenue of such carrier which is attributable to the cost of security screening facilities and procedures used in intrastate, interstate, and overseas air transportation exceeds the actual cost of such carrier of such facilities. The Secretary may issue such regulations as he deems necessary to carry out the purpose of this section.

(b) Definitions applicable

The terms used in this section which are defined in the Federal Avaition Act of 1958 [49 U.S.C. 1301 et seq.] shall have the same meaning as such terms have in such Act.

(c) Authorization of appropriations

There is authorized to be appropriated out of the Airport and Airway Trust Fund to carry out this section not to exceed $3,750,000 for

fiscal year 1976, including the period July 1, 1976, through September 30, 1976, and $3,000,000 per fiscal year for the fiscal years 1977 and 1978.

(Pub. L. 94-353, title I, § 24, July 12, 1976, 90 Stat. 885.)

REFERENCES IN TEXT

The Federal Aviation Act of 1958, referred to in subsec. (b), is Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, as amended, which is classified principally to this chapter (§ 1301 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

CODIFICATION

Section was enacted as part of Pub. L. 94-353, known as the Airport and Airway Development Act Amendments of 1976, and not as part of Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958, which comprises this chapter.

§ 1357. Air transportation security

(a) Rules and regulations; authority of Administrator to prescribe; purposes; consultations and criteria for promulgation and amendment

(1) The Administrator of the Federal Aviation Administration shall prescribe such reasonable rules and regulations requiring such practices, methods, and procedures, or governing the design, materials, and construction of aircraft, as he may deem necessary to protect persons and property aboard aircraft operating in air transportation or intrastate transportatin against acts of criminal violence and aircraft piracy.

(2) In prescribing and amending rules and regulations under paragraph (1) of this subsection, the Administrator shall—

(A) consult with the Secretary of Transportation, the Attorney General, and such other Federal, State, and local agencies as he may deem appropriate;

(B) consider whether any proposed rule or regulation is consistent with protection of passengers in air transportation or intrastate air transportation against acts of criminal violence and aircraft piracy and the public interest in the promotion of air transportation and intrastate air transportation;

(C) to the maximum extent practicable, require uniform procedures for the inspection, detention, and search of persons and property in air transportation and intrastate air transportation to assure their safety and to assure that they will receive courteous and efficient treatment, by air carriers, their agents and employees, and by Federal, State, and local law enforcement personnel engaged in carrying out any air transportation security program established under this section; and

(D) consider the extent to which any proposed rule or regulation will contribute to carrying out the purposes of this section.

(b) Establishment of security programs by airport operators; utilization of qualified State, local and private law enforcement personnel; procedure for utilization of personnel of other Federal departments and agencies or employed directly by Administrator

Regulations prescribed under subsection (a) of this section shall require operators of airports regularly serving air carriers certificated by the Civil Aeronautics Board to establish air transportation security programs providing a law enforcement presence and capability at such airports adequate to insure the safety of persons traveling in air transportation or intrastate air transportation from acts of criminal violence and aircraft piracy. Such regulations shall authorize such airport operators to utilize the services of qualified State, local, and private law enforcement personnel whose services are made available by their employers. In any case in which the Adminstrator determines, after receipt of notification from an airport operator in such form as the Administrator may prescribe, that qualified State, local, and private law enforcement personnel are not available in sufficient numbers to carry out the provisions of subsection (a) of this section, the Administrator may, by order, authorize such airport operator to utilize, on a reimbursable basis, the services of—

(1) personnel employed by any other Federal department or agency, with the consent of the head of such department or agency; and

(2) personnel employed directly by the Administrator;

at the airport concerned in such numbers and for such period of time as the Administrator may deem necessary to supplement such State, local, and private law enforcement personnel. In making the determination referred to in the preceding sentence the Adminstrator shall take into consideration—

(A) the number of passengers enplaned at such airport;

(B) the extent of anticipated risk of criminal violence and aircraft piracy at such airport or to the air carrier aircraft operations at such airport; and

(C) the availability at such airport of qualified State or local law enforcement personnel.

(c) Training for personnel employed to carry out security programs; uniform standards for training and minimum qualifications of personnel eligible for training

The Administrator may provide training for personnel employed by him to carry out any air transportation security program established under this section and for other personnel, including State, local, and private law enforcement personnel, whose services may be utilized in carrying out any such air transportation security program. The Administrator shall prescribe uniform standards with respect to training provided personnel whose services are utilized to enforce any such air transportation security program, including State, local, and private law enforcement personnel, and uniform standards with respect to minimum qualifications for personnel eligible to receive such training.

(d) Research and development by Administrator of security systems, procedures, facilities, and devices; disclosure of confidential information

(1) The Administrator shall conduct such research (including behavioral research) and development as he may deem appropriate to develop, modify, test, and evaluate systems, procedures, facilities, and devices to protect persons and property aboard aircraft in air transporta-

tion or intrastate air transportation against acts of criminal violence and aircraft piracy.

(2) Notwithstanding section 552 of title 5 relating to freedom of information, the Administrator shall prescribe such regulations as he may deem necessary to prohibit disclosure of any information obtained or developed in the conduct of research and development activities under this subsection if, in the opinion of the Administrator, the disclosure of such information—

(A) would constitute an unwarranted invasion of personal privacy (including, but not limited to, information contained in any personnel, medical, or similar file);

(B) would reveal trade secrets or privileged or confidential commercial or financial information obtained from any person; or

(C) would be detrimental to the safety of persons traveling in air transportation.

Nothing in this subsection shall be construed to authorize the withholding of information from the duly authorized committees of the Congress.

(e) Overall responsibility of Administrator

(1) Except as otherwise specifically provided by law, no power, function, or duty of the Administrator of the Federal Aviation Administration under this section shall be assigned or transferred to any other Federal department or agency.

(2) Notwithstanding any other provisions of law, the Administrator of the Federal Aviation Administration shall have the exclusive responsibility for the direction of any law enforcement activity affecting the safety of persons aboard aircraft in flight involved in the commission of an offense under section 1472(i) or (n) of this title. Other Federal departments and agencies shall, upon request by the Administrator, provide such assistance as may be necessary to carry out the purposes of this paragraph.

(3) For the purposes of this subsection, an aircraft is considered in flight from the moment when all external doors are closed following embarkation until the moment when such door is opened for disembarkation.

(f) Definitions

For purposes of this section, the term "law enforcement personnel" means individuals—

(1) authorized to carry and use firearms,

(2) vested with such police power of arrest as the Administrator deems necessary to carry out this section, and

(3) identifiable by appropriate indicia of authority.

(Pub. L. 85-726, title III, § 316, as added Pub. L. 93-366, title II, § 202, Aug. 5, 1974, 88 Stat. 415.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1358 of this title.

§ 1358. Airport security in Alaska; exemptions from requirements

The Adminsitrator is authorized to exempt from the provisions of sections 1356 and 1357 of this title those airports in Alaska which receive service only from air carriers operating under certificates granted by the Civil Aeronautics Board under section 1371 of this title, which operate aircraft having a maximum certificated gross takeoff weight of less than 12,500 pounds, and which do not enplane any passenger, or any property intended to be carried in the aircraft cabin, which passenger or property is moving in air transportation and will not be subject to screening in accordance with such section 1356 of this title at an airport in Alaska before such passenger or property is enplaned for any point outside Alaska.

(Pub. L. 85-726, title III, § 317, as added Pub. L. 94-353, title I, § 17(a), July 12, 1976, 90 Stat. 882.)

SUBCHAPTER IV—AIR CARRIER ECONOMIC REGULATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1352, 1471, 1472 of this title.

§ 1371. Certificate of public convenience and necessity

(a) Essentiality

No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Board authorizing such air carrier to engage in such transportation.

(b) Application

Application for a certificate shall be made in writing to the Board and shall be so verified, shall be in such form and contain such information, and shall be accompanied by such proof of service upon such interested persons, as the Board shall by regulation require.

(c) Notice of application; filing of protest or memorandum; hearing

Upon the filing of any such application, the Board shall give due notice thereof to the public by posting a notice of such application in the office of the secretary of the Board and to such other persons as the Board may by regulation determine. Any interested person may file with the Board a protest or memorandum of opposition to or in support of the issuance of a certificate. Such application shall be set for public hearing, and the Board shall dispose of such application as speedily as possible.

(d) Issuance

(1) The Board shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this chapter and the rules, regulations, and requirements of the Board hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied.

(2) In the case of an application for a certificate to engage in temporary air transportation, the Board may issue a certificate authorizing the whole or any part thereof for such limited periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this chapter and the rules, regulations, and requirements of the Board hereunder.

(3) In the case of an application for a certificate to engage in supplemental air transportation, the Board may issue a certificate, to any applicant not holding a certificate under paragraph (1) or (2) of this subsection, authorizing the whole or any part thereof, and for such periods, as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application and to conform to the provisions of this chapter and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this chapter.

(e) Terms, conditions, and limitations

(1) Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require.

(2) A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign air transportation shall be authorized to handle and transport mail of countries other than the United States.

(3) A certificate issued under this section to engage in supplemental air transportation shall designate the terminal and intermediate points only insofar as the Board shall deem practicable and otherwise shall designate only the geographical area or areas within or between which service may be rendered.

(4) No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the public shall require; except that the Board may impose such terms, conditions, or limitations in a certificate for supplemental air transportation when required by subsection (d)(3) of this section.

(5) No air carrier shall be deemed to have violated any term, condition, or limitation of its certificate by landing or taking off during an emergency at a point not named in its certificate or by operating in an emergency, under regulations which may be prescribed by the Board, between terminal and intermediate points other than those specified in its certificate.

(6) Any air carrier, other than a supplemental air carrier, may perform charter trips (including inclusive tour charter trips) or any other special service, without regard to the points named in its certificate, or the type of service provided therein, under regulations prescribed by the Board.

(f) Effective date and duration

Each certificate shall be effective from the date specified therein, and shall continue in effect until suspended or revoked as hereinafter provided, or until the Board shall certify that operation thereunder has ceased, or, if issued for a limited period of time under subsection (d)(2) of this section, shall continue in effect until the expiration thereof, unless, prior to the date of expiration, such certificate shall be suspended or revoked as provided herein, or the Board shall certify that operations thereunder have ceased: *Provided,* That if any service authorized by a certificate is not inaugurated within such period, not less than ninety days, after the date of the authorization as shall be fixed by the Board, or if, for a period of ninety days or such other period as may be designated by the Board any such service is not operated, the Board may by order, entered after notice and hearing, direct that such certificate shall thereupon cease to be effective to the extent of such service.

(g) Alteration, amendment, modification, suspension, or revocation

The Board upon petition or complaint or upon its own initiative, after notice and hearings, may alter, amend, modify, or suspend any such certificate, in whole or in part, if the public convenience and necessity so require, or may revoke any such certificate, in whole or in part, for intentional failure to comply with any provision of this subchapter or any order, rule, or regulation issued hereunder or any term, condition, or limitation of such certificate: *Provided,* That no such certificate shall be revoked unless the holder thereof fails to comply, within a reasonable time to be fixed by the Board, with an order of the Board commanding obedience to the provision, or to the order (other than an order issued in accordance with this proviso), rule, regulation, term, condition, or limitation found by the Board to have been violated. Any interested person may file with the Board a protest or memorandum in support of or in opposition to the alteration, amendment, modification, suspension, or revocation of the certificate.

(h) Transfer

No certificate may be transferred unless such transfer is approved by the Board as being consistent with the public interest.

(i) Rights in the use of airspace, airways, landing areas, or air-navigation facilities

No certificate shall confer any proprietary, property, or exclusive right in the use of any airspace, Federal airway, landing area, or air-navigation facility.

(j) Abandonment of routes

No air carrier shall abandon any route, or part thereof, for which a certificate has been issued by the Board, unless, upon the application of such air carrier, after notice and hearing, the Board shall find such abandonment to be in the public interest. Any interested person may file with the Board a protest or memorandum of opposition to or in support of any such abandonment. The Board may, by regulations

or otherwise, authorize such temporary suspension of service as may be in the public interest.

(k) Compliance with labor legislation

(1) Every air carrier shall maintain rates of compensation, maximum hours, and other working conditions and relations of all of its pilots and copilots who are engaged in interstate air transportation within the continental United States (not including Alaska) so as to conform with decision numbered 83 made by the National Labor Board on May 10, 1934, notwithstanding any limitation therein as to the period of its effectiveness.

(2) Every air carrier shall maintain rates of compensation for all of its pilots and copilots who are engaged in overseas or foreign air transportation or air transportation wholly within a Territory or possession of the United States, the minimum of which shall be not less, upon an annual basis, than the compensation required to be paid under said decision 83 for comparable service to pilots and copilots engaged in interstate air transportation within the continental United States (not including Alaska).

(3) Nothing herein contained shall be construed as restricting the right of any such pilots or copilots, or other employees, of any such air carrier to obtain by collective bargaining higher rates of compensation or more favorable working conditions or relations.

(4) It shall be a condition upon the holding of a certificate by any air carrier that such carrier shall comply with title II of the Railway Labor Act, as amended [45 U.S.C. 181 et seq.].

(5) The term "pilot" as used in this subsection shall mean an employee who is responsible for the manipulation of or who manipulates the flight controls of an aircraft while under way including takeoff and landing of such aircraft, and the term "copilot" as used in this subsection shall mean an employee any part of whose duty is to assist or relieve the pilot in such manipulation, and who is properly qualified to serve as, and hold a currently effective airman certificate authorizing him to serve as, such pilot or copilot.

(l) Carriage of mail

Whenever so authorized by its certificate, any air carrier shall provide necessary and adequate facilities and service for the transportation of mail, and shall transport mail whenever required by the Postmaster General. Such air carrier shall be entitled to receive reasonable compensation therefor as hereinafter provided.

(m) Application for new mail service

Whenever, from time to time, the Postmaster General shall find that the needs of the Postal Service require the transportation of mail by aircraft between any points within the United States or between the United States and foreign countries, in addition to the transportation of mail authorized in certificates then currently effective, the Postmaster General shall certify such finding to the Board and file therewith a statement showing such additional service and the facilities necessary in connection therewith, and a copy of such certification and statement shall be posted for at least twenty days in the office of the secretary of the Board. The Board shall, after notice and hearing, and if found by it to be required by the public convenience and necessity, make provision for such additonal service, and the facilities necessary in connection therewith, by issuing a new certificate or certificates or by amending an existing certificate or certificates in accordance with the provisions of this section.

(n) Additional powers and duties of Board with respect to supplemental air carriers

(1) No certificate to engage in supplemental air transportation, and no special operating authorization described in section 1387 of this title, shall be issued or remain in effect unless the applicant for such certificate or the supplemental air carrier, as the case may be, complies with regulations or orders issued by the Board governing the filing and approval of policies of insurance, in the amount prescribed by the Board, conditioned to pay, within the amount of such insurance, amounts for which such applicant or such supplemental air carrier may become liable for bodily injuries to or the death of any person, or for loss of or damage to property of others, resulting from the negligent operation or maintenance of aircraft under such certificate or such special operating authorization.

(2) In order to protect travelers and shippers by aircraft operated by supplemental air carriers, the Board may require any supplemental air carrier to file a performance bond or equivalent security arrangement, in such amount and upon such terms as the Board shall prescribe, to be conditioned upon such supplemental air carrier's making appropriate compensation to such travelers and shippers, as prescribed by the Board, for failure on the part of such carrier to perform air transportation services in accordance with agreements therefor.

(3) If any service authorized by a certificate to engage in supplemental air transportation is not performed to the minimum extent prescribed by the Board, it may by order, entered after notice and hearing, direct that such certificate shall thereupon cease to be effective to the extent of such service.

(4) The requirement that each applicant for a certificate to engage in supplemental air transportation must be found to be fit, willingly, and able properly to perform the transportation covered by his application and to conform to the provisions of this chapter and the rules, regulations, and requirements of the Board under this chapter shall be a continuing requirement applicable to each supplemental air carrier with respect to the transportation authorized by, and currently furnished or proposed to be furnished under, such carrier's certificate. The Board shall by order, entered after notice and hearing, modify, suspend, or revoke such certificate, in whole or in part, for failure of such carrier (A) to comply with the continuing requirement that such carrier be so fit, willing, and able, or (B) to file such reports as the Board may deem necessary to determine whether such carrier is so fit, willing, and able.

(5) In any case in which the Board determines that the failure of a supplemental air carrier to comply with the provisions of paragraph (1), (3), or (4) of this subsection, or regulations or orders of the Board thereunder, requires, in the interest of the rights, welfare, or

safety of the public, immediate suspension of such carrier's certificate, the Board shall suspend such certificate, in whole or in part, without notice or hearing, for not more than thirty days. The Board shall immediately enter upon a hearing to detemine whether such certificate should be modified, suspended, or revoked and, pending the completion of such hearing, the Board may further suspend such certificate for additional periods aggregating not more than sixty days. If the Board determines that a carrier whose certificate is suspended under this paragraph comes into compliance with the provisons of paragraphs (1), (3), and (4) of this subsection, and regulations and orders of the Board thereunder, the Board may immediately terminate the suspension of such certificate and any pending proceeding commenced under this paragraph, but nothing in this sentence shall preclude the Board from imposing on such carrier a civil penalty for any violation of such provisions, regulations, or orders.

(6) The Board shall prescribe such regulations and issue such orders as may be necessary to carry out the provisions of this subsection.

(o) Interstate air transportation of persons or property

(1) Except as provided in paragraph (2) of this subsection, transportation of persons or property by transport category aircraft in interstate air transportation procured by the Department of Defense, including military departments within such Department, through contracts of more than 30 days duration for airlift service within the United States, shall be provided only by carriers which (1) have aircraft in the civil reserve air fleet or offer to place aircraft in such fleet, and (2) hold certificates under this section. Applications for certification under subsection (a) of this section for the purpose of providing the service referred to in this subsection shall be acted on expeditiously by the Board.

(2) In any case in which the Secretary of Defense determines that no air carrier certificated under subsection (a) of this section is capable of providing and willing to provide the type of service described in paragraph (1) of this subsection, he may contract with an air carrier which does not hold a certificate under this section.

(Pub. L. 85-726, title IV, § 401, Aug. 23, 1958, 72 Stat. 754; Pub. L. 87-528, §§ 2-4, July 10, 1962, 76 Stat. 143; Pub. L. 90-514, § 3, Sept. 26, 1968, 82 Stat. 867; Pub. L. 94-353, title I, § 18(a), July 12, 1976, 90 Stat. 883.)

REFERENCES IN TEXT

This chapter referred to in subsecs. (d)(1) and (3) and (n)(4), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

The Railway Labor Act, referred to in subsec. (k)(4), is act May 10, 1926, ch. 347, 44 Stat. 577, as amended. Title II of the Railway Labor Act was added by act Apr. 10, 1936, ch. 166, 49 Stat. 1189, and is classified generally to subchapter II (§ 181 et seq.) of chapter 8 of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables volume.

AMENDMENTS

1976—Subsec. (o). Pub. L. 94-353 added subsec. (o).

1968—Subsec. (e)(6). Pub. L. 90-514 added inclusive tour charter trips to the charter trips which air carriers, other than supplemental air carriers, may perform.

1962—Subsec. (d). Pub. L. 87-528, § 2, added par. (3).

Subsec. (e). Pub. L. 87-528, § 3, required certificates to engage in supplemental air transportation to designate terminal and intermediate points only as the Board deems practicable and otherwise only the geographical area or areas where service may be rendered, permitted the Board to impose terms, conditions, or limitations in a certificate for supplemental air transportation when required by subsection (d)(3) of this section, and limited the performance of charter trips or any special service without regard to points named in the certificate, or the type of service provided therein, to air carriers other than supplemental air carriers.

Subsec. (n). Pub. L. 87-528, § 4, added subsec. (n).

CHANGE OF NAME

In subsec. (m), "United States Postal Service" was substituted for "Postal Service" pursuant to Pub. L. 91-375, § 6(o), Aug. 12, 1970, 84 Stat. 733, set out as a note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE

Subchapter effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now the Federal Aviation Administrator] first appointed under this chapter qualifies and takes office, see section 1505(2) of Pub. L. 85-726, set out as an Effective Date note under section 1301 of this title. The Administrator of the Federal Aviation Agency was appointed, qualified, and took office on Oct. 31, 1958.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Civil Aeronautics Board and the Chairman, members, offices, and officers thereof under subchapters VI and VII of this chapter were transferred to the Secretary of Transportation by Pub. L. 89-670, § 6(d), Oct. 15, 1966, 80 Stat. 937, to be exercised by the National Transportation Safety Board. See sections 1655(d) and 1903(a)(1)(A), (9) of this title.

INCLUSIVE TOUR CHARTER TRIPS IN SUPPLEMENTAL AIR TRANSPORTATION VALIDATED

Section 2 of Pub. L. 90-514 provided that: "Certificates of public convenience and necessity for supplemental air transportation and statements of authorizations, issued by the Civil Aeronautics Board, are hereby validated, ratified, and continued in effect according to their terms, notwithstanding any contrary determinations by any court that the Board lacked power to authorize the performance of inclusive tour charter trips in air transportation."

APPLICATION FOR CERTIFICATE FOR SUPPLEMENTAL AIR TRANSPORTATION WITHIN 30 DAYS AFTER JULY 10, 1962

Section 7 of Pub. L. 87-528 provided that:

"(a) If any applicant who makes application under section 401(d)(3) of the Federal Aviation Act of 1958 [subsection (d)(3) of this section] for a certificate for supplemental air transportation within thirty days after the date of enactment of this Act [July 10, 1962] shall show—

"(1) that it, or its predecessor in interest, was an air carrier authorized to furnish service between places within the United States under a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to order E-13436, adopted January 28, 1959, or order E-14196, adopted July 8, 1959, or that it was given interim authority to operate in interstate air transportation as a supplemental air carrier under Board order E-9744 of

November 15, 1955, and has pending before the Board an application for certification as a supplemental air carrier which was filed prior to July 14, 1960;

"(2) that, during the period beginning on the date such certificate was issued or such interim operating authority was conferred by the Board and ending on the date of enactment of this Act [July 10, 1962], such applicant or his predecessor in interest lawfully performed (A) a substantial portion of the transportation authorized by such certificate or interim operating authority, (B) substantial operations in overseas or foreign air transportation, as a supplemental or large irregular air carrier, authorized by the Board, or (C) substantial operations for the Military Establishment of the United States authorized by the Board;

"(3) that such certificate or interim operating authority had not been revoked or otherwise terminated by the Board or had not otherwise expired prior to the enactment of this Act [July 10, 1962]: *Provided*, That for the purposes of this section such certificate or operating authority shall be considered to have been revoked or terminated if the Board has issued a final order to that effect on or before the date of enactment of this Act [July 10, 1962], notwithstanding a pending judicial review of such order; and

"(4) that such certificate or interim operating authority is held by the original grantee or has been transferred to the applicant with Board approval pursuant to section 401(h) of the Federal Aviation Act of 1958 [subsection (h) of this section]: *Provided*, That a person who on the date of enactment of this Act [July 10, 1962] had on file with the Board an application for the approval of transfer to him of a certificate for supplemental air transportation or interim operating authority, may be issued a new interim certificate or new interim operating authority under this section if the Board approves the transfer pursuant to section 401(h) of the Federal Aviation Act of 1958 [subsection (h) of this section]; the Board may issue a new interim certificate or new interim authority to such applicant to engage in supplemental air transportation, as defined in the Federal Aviation Act of 1958 [this chapter], subject to such terms, conditions, and limitations as the Board may prescribe, pending issuance or denial of a certificate pursuant to section 401(d)(3) of the Federal Aviation Act of 1958 [subsection (d)(3) of this section], if it determines that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of such Act and the rules, regulations, and requirements of the Board and the Administrator.

"(b) If any applicant who makes application under section 401(d)(3) of the Federal Aviation Act of 1958 [subsection (d)(3) of this section] for a certificate for supplemental air transportation within thirty days after the date of enactment of this Act [July 10, 1962] shall show that it or its predecessor has received interim operating authority from the Civil Aeronautics Board pursuant to paragraph (2) of the first section of Public Law 86-661 of July 14, 1960 (74 Stat. 527), the Board may issue new interim authority to such applicant to engage in supplemental air transportation, as defined in the Federal Aviation Act of 1958 [this chapter], subject to such terms, conditions, and limitations as the Board may prescribe, pending issuance or denial of a certificate pursuant to section 401(d)(3) of the Federal Aviation Act of 1958 [subsection (d)(3) of this section], if it determines that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of such Act and the rules, regulations, and requirements of the Board and the Administrator.

"(c) If an applicant who makes application under section 401(d)(3) of the Federal Aviation Act of 1958 [subsection (d)(3) of this section] for a certificate for supplemental air transportation shall show—

"(1) that it, or its predecessor in interest, was a carrier authorized to furnish all-cargo service between places within the United States by a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to order numbered E-3085, adopted July 29, 1949, order numbered E-9760, adopted November 21, 1955, or order numbered E-10084, adopted March 12, 1956;

"(2) that within thirty days prior to such application there has become final an order of the Civil Aeronautics Board in the domestic cargo-mail service case, docket numbered 10,076 and others, denying applicant's, or its predecessor's, application for renewal of such certificate; and

"(3) that immediately prior to the effective date of such denial the applicant, or its predecessor in interest, lawfully performed either (A) any portion of the service authorized by the certificate or (B) any operations for the Military Establishment of the United States authorized by the Board;

the Board may issue a new interim certificate to such applicant to engage in supplemental air transportation, as defined in the Federal Aviation Act of 1958 [this chapter], subject to such terms, conditions, and limitations as the Board may prescribe, pending issuance or denial of a certificate pursuant to section 401(d)(3) of the Federal Aviation Act of 1958 [subsection (d)(3) of this section], if it determines that the applicant is fit, willing and able properly to perform such transportation and to conform to the provisions of such Act and the rules, regulations, and requirements of the Board and the Administrator.

"(d) A new interim certificate or new interim authority issued under this section shall not be deemed a license within the meaning of section 9(b) of the Administrative Procedure Act (5 U.S.C. 1008(b)) [now covered by section 558(c) of Title 5, Government Organization and Employees]."

AUTHORITY FOR CERTAIN CARRIERS FOR CONTINUATION OF OPERATIONS

Section 8 of Pub. L. 87-528 provided that:

"(a) If any air carrier, or its predecessor in interest, was an air carrier authorized to furnish service between places within the United States by a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to order E-13436, adopted January 28, 1959, or order E-14196, adopted July 8, 1959, or it or its predecessor received interim operating authority from the Board pursuant to paragraph (2) of the first section of Public Law 86-661 of July 14, 1960 (74 Stat. 527), and the operating authority described in this subsection has not been revoked or otherwise terminated by the Board, it may perform operations as described in such certificate or such interim operating authority, subject to the terms, conditions, and limitations applicable to such certificate or such interim operating authority, or both, as the case may be, for thirty days from the date of enactment of this Act [July 10, 1962], and if it has filed application pursuant to section 401(d)(3) of the Federal Aviation Act of 1958 [subsection (d)(3) of this section] within said thirty days, may perform such operations, subject to such terms, conditions, and limitations, for a period of ninety days from the date of enactment of this Act [July 10, 1962]. Any air carrier whose application for certification as a supplemental air carrier is pending before the Board and which (A) has operated in interstate air transportation as a supplemental air carrier pursuant to authority granted under Board order E-9744 of November 15, 1955, and (B) had such application for a certificate as a supplemental air carrier pending before the Board on July 14, 1960, and whose operating authority described in this subsection has not been revoked or otherwise terminated by the Board, may continue to operate in interstate air transportation as described in such operating authority, subject to the terms, conditions, and limitations applicable to such operating authority, for thirty days from the date of enactment of this Act [July 10, 1962], and if it has filed application pursuant to section 401(d)(3)

of the Federal Aviation Act of 1958 [subsection (d)(3) of this section] within said thirty days, may perform such operations, subject to such terms, conditions, and limitations, for a period of ninety days from the date of enactment of this Act [July 10, 1962].

"(b) The certificates of public convenience and necessity issued by the Board pursuant to order E-13436 adopted January 28, 1959, and order E-14196, adopted July 8, 1959, and the interim operating authority issued by the Board pursuant to paragraph (2) of the first section of Public Law 86-661 of July 14, 1960 (74 Stat. 527), and the exemption authority issued by the Board under order E-9744 of November 15, 1955, and prior authority under individual exemptions or Letters of Registration reinstated by the Board under order E-10161 of April 3, 1956, shall terminate thirty days from the date of enactment of this Act [July 10, 1962].

"(c) From and after the thirtieth day after the date of enactment of this Act [July 10, 1962] the provisions of section 9(b) of the Administrative Procedure Act (5 U.S.C. 1008(b)) [now section 558(c) of Title 5, Government Organization and Employees] shall not be applicable to any operating authority referred to in this section, or to any application for renewal thereof."

AUTHORITY TO PERFORM INDIVIDUALLY TICKETED AND WAYBILLED SERVICES

Section 9 of Pub. L. 87-528 provided that the Civil Aeronautics Board, if it was in the public interest, could authorized the holder of any certificate or operating authority issued by the Board pursuant to Pub. L. 87-528, or under subsec. (d)(3) of this section, to perform individually ticketed and individually waybilled services in air transportation during the two year period beginning on July 10, 1962, subject to terms and conditions as the Board prescribed, except that the annual gross revenue from the services authorized during each year of the two year period should not exceed the average annual gross revenue from individually ticketed and individually waybilled services furnished by such holders during the period beginning Jan. 1, 1959, and ending Dec. 31, 1961, as determined by the Board.

ENFORCEMENT OR COMPLIANCE PROCEEDINGS BY BOARD

Section 10 of Pub. L. 87-528 provided that:

"The provisions of this Act [which added section 1387 of this title, amended this section, and sections 1301, 1376, 1471, and 1472 of this title, and enacted provisions set out as notes under this section] shall in no way affect the authority of the Board—

"(1) to maintain any enforcement or compliance proceeding or action against the holder of a certificate of public convenience and necessity issued pursuant to Board order E-13436 of January 28, 1959, or Board order E-14196 of July 8, 1959, or against the holder of any interim operating authority conferred by the Board under paragraph (2) of the first section of Public Law 86-661 or under Board order E-9744 of November 15, 1955, which proceeding or action is pending before the Board on the date of enactment of this Act [July 10, 1962]; or

"(2) to institute, on or after the date of enactment of this Act [July 10, 1962], any enforcement or compliance proceeding or action against the holder of any certificate or interim operating authority referred to in paragraph (1) of this section with respect to any violation of—

"(A) the Federal Aviation Act of 1958 [this chapter],

"(B) the provisions of such certificate,

"(C) the terms of such operating authority, or

"(D) the regulations of the Board,

without regard to when such violation occurred. Any sanction which the Board lawfully could have imposed on the operating authority of the holder of any certificate or interim operating authority referred to in paragraph (1) of this section for any violation referred to in paragraph (2) of this section, which violation occurred prior to the issuance to such holder of a new interim certificate or new interim authority under section 7 of this Act [set out as a note under this section] or the issuance to such holder of a certificate of public convenience and necessity to engage in supplemental air transportation under paragraph (3) of section 401(d) of the Federal Aviation Act of 1958 [subsection (d)(3) of this section], may be imposed on the certificate or other operating authority issued to such holder under section 7 of this Act [set out as a note under this section] or under paragraph (3) of section 401(d) of the Federal Aviation Act of 1958 [subsection (d)(3) of this section]."

DISPOSAL OF APPLICATIONS CONSOLIDATED INTO THE LARGE IRREGULAR AIR CARRIER INVESTIGATION PROCEEDING

Section 11 of Pub. L. 87-528 provided that any application of an air carrier previously consolidated into the Board proceeding known as the Large Irregular Air Carrier Investigation, Docket Numbered 5132 and others, was deemed to have been finally disposed of on July 10, 1962.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1301, 1356, 1356a, 1358, 1375, 1386, 1487, 1517, 1711, 1718, 1729 of this title; title 39 section 5402.

§ 1372. Permits to foreign air carriers

(a) Necessity

No foreign air carrier shall engage in foreign air transportation unless there is in force a permit issued by the Board authorizing such carrier so to engage.

(b) Issuance

The Board is empowered to issue such a permit if it finds that such carrier is fit, willing, and able properly to perform such air transportation and to conform to the provisions of this chapter and the rules, regulations, and requirements of the Board hereunder, and that such transportation will be in the public interest.

(c) Application

Application for a permit shall be made in writing to the Board, shall be so verified, shall be in such form and contain such information, and shall be accompanied by such proof of service upon such interested persons, as the Board shall by regulation require.

(d) Notice of application; filing of protest or memorandum; hearing

Upon the filing of an application for a permit the Board shall give due notice thereof to the public by posting a notice of such application in the office of the secretary of the Board and to such other persons as the Baord may by regulation determine. Any interested person may file with the Board a protest or memorandum of opposition to or in support of the issuance of a permit. Such application shall be set for public hearing and the Board shall dispose of such application as speedily as possible.

(e) Terms, conditions, and limitations

The Board may prescribe the duration of any permit and may attach to such permit such reasonable terms, conditions, or limitations, as, in its judgment, the public interest may require.

(f) Alteration, modification, amendment, suspension, cancellation, or revocation

Any permit issued under the provisions of this section may, after notice and hearing, be altered, modified, amended, suspended, canceled, or revoked by the Board whenever it finds such action to be in the public interest. Any interested person may file with theBoard a protest or memorandum in support of or in opposition to the alteration, modification, amendment, suspension, cancellation, or revocation of a permit.

(g) Transfer of permit

No permit may be transferred unless such transfer is approved by the Board as being in the public interest.

(Pub. L. 85–726, title IV, § 402, Aug. 23, 1958, 72 Stat. 757.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), read in the original, "this Act", meaning Pub. L. 85–726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1356, 1461, 1508, 1515, 1718 of this title.

§ 1373. Tariffs of air carriers

(a) Filing, posting, and publication; rejection of tariffs

Every air carrier and every foreign air carrier shall file with the Board, and print, and keep open to public inspection, tariffs showing all rates, fares, and charges for air transportation between points served by it, and between points served by it and points served by any other air carrier or foreign air carrier when through service and through rates shall have been established, and showing to the extent required by regulations of the Board, all classifications, rules, reguations, practices, and services in connection with such air transportation. Tariffs shall be filed, posted, and published in such form and manner, and shall contain such information, as the Board shall by regulation prescribe; and the Board is empowered to reject any tariff so filed which is not consistent with this section and such regulations. Any tariff so rejected shall be void. The rates, fares, and charges shown in any tariff shall be stated in terms of lawful money of the United States, but such tariffs may also state rates, fares, and charges in terms of currencies other than lawful money of the United States, and may, in the case of foreign air transportation, contain such information as may be required under the laws of any country in or to which an air carrier or foreign air carrier is authorized to operate.

(b) Observance of tariffs; granting, soliciting, or accepting rebates

(1) No air carrier or foreign air carrier or any ticket agent shall charge or demand or collect or receive a greater or less or different compensation for air transportation, or for any service in connection therewith, than the rates, fares, and charges specified in then currently effective tariffs of such air carrier or foreign air carrier; and no air carrier or foreign air carrier or ticket agent shall, in any manner or by any device, directly or indirectly, or through any agent or broker, or otherwise, refund or remit any portion of the rates, fares, or charges so specified, or extend to any person any privileges or facilites, with respect to matters required by the Board to be specified in such tariffs except those specified therein. Nothing in this chapter shall prohibit such air carriers or foreign air carriers, under such terms and conditions as the Board may prescribe, from issuing or interchanging tickets or passes for free or reduced-rate transportation to their directors, officers, and employees (including retired directors, officers, and employees who are receiving retirement benefits from any air carrier or foreign air carrier), the parents and immediate families of such officers and employees, and the immediate families of such directors; widows, widowers, and minor children of employees who have died as a direct result of personal injury sustained while in the performance of duty in the service of such air carrier or foreign air carrier; witnesses and attorneys attending any legal investigation in which any such air carrier is interested; persons injured in aircraft accidents and physicians and nurses attending such persons; immediate families, including parents, of persons injured or killed in aircraft accidents where the object is to transport such persons in connection with such accident; and any person or property with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation; and, in the case of overseas or foreign air transportation, to such other persons and under such other circumstances as the Board may by regulations prescribe. Any air carrier or foreign air carrier, under such terms and conditions as the Board may prescribe, may grant reduced-rate transportation to ministers of religion on a space-available basis.

(2) No shipper, consignor, consignee, forwarder, broker, or other person, or any director, officer, agent, or employee thereof, shall knowingly pay, directly or indirectly, by any device or means, any greater or less or different compensation for air transportation of property, or for any service in connection therewith, than the rates, fares, and charges specified in currently effective tariffs applicable to such air transportation; and no such person shall, in any manner or by any device, directly or indirectly, through any agent or broker, or otherwise, knowingly solicit, accept, or receive a refund or remittance of any portion of the rates, fares or charges so specified, or knowingly solicit, accept, or receive any privilege, favor, or facility, with respect to matters required by the Board to be specified in such tariffs, except those specified therein.

(c) Notice of change in tariff

No change shall be made in any rate, fare, or charge, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, specified in any effective tariff of any air carrier or foreign air carrier, except after thirty days' notice of the proposed change filed, posted, and published in accordance with subsection (a) of this section. Such notice shall plainly state the

change proposed to be made and the time such change will take effect. The Board may in the public interest, by regulation or otherwise, allow such change upon notice less than that herein specified, or modify the requirements of this section with respect to filing and posting of tariffs, either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

(d) Filing of divisions of rates and charges

Every air carrier or foreign air carrier shall keep currently on file with the Board, if the Board so requires, the established divisions of all joint rates, fares, and charges for air transportation in which such air carrier or foreign air carrier participates.

(Pub. L. 85-726, title IV, § 403, Aug. 23, 1958, 72 Stat. 758; Pub. L. 86-627, July 12, 1960, 74 Stat. 445; Pub. L. 93-623, §§ 7(a), 8(a), Jan. 3, 1975, 88 Stat. 2105.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

AMENDMENTS

1975—Subsec. (b)(1). Pub. L. 93-623 §§ 7(a), 8(a), designated existing provisons as subsec. (b)(1), and, as so designated, added "or any ticket agent" after "No air carrier or foreign air carrier" wherever appearing therein, and substituted "then currently effective tariffs of such air carrier or foreign air carrier" for "its currently effective tariffs".

Subsec. (b)(2). Pub. L. 93-623, § 8(a), added subsec. (b)(2).

1960—Subsec. (b). Pub. L. 86-627 authorized free or reduced-rate transprotation to retired directors, officers, and employees who are receiving retiree benefits from any air carrier or foreign air carrier; the parents and immediate familes of the officers and employees, and the immediate families of the directors; widows, widowers, and minor children of employees who have died as a direct result of personal injury sustained while in the performance of duty in the service of an air carrier or foreign air carrier; and immediate families, including parents, of persons injured or killed in aircraft accidents where the object is to transport such persons in connection with such accident.

§ 1374. Rates of carriage for persons and property; duty to provide service, rates, and divisions; foreign air transportation rates; discrimination

(a)(1) It shall be the duty of every air carrier to provide and furnish interestate and overseas air transportation, as authorized by its certificate, upon reasonable request therefor and to provide reasonable through service in such air transportation in connection with other air carriers; to provide safe and adequate service, equipment, and facilities in connection with such transportation; to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable classifications, rules, regulations, and practices relating to such air transportation; and, in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between air carriers participating therein which shall not unduly prefer or prejudice any of such participating air carriers.

(2) It shall be the duty of every air carrier and foreign air carrier to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable classifications, rules, regulations, and practices relating to foreign air transportation; and, in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisons thereof as between air carriers or foreign air carriers participating therein which shall not unduly prefer or prejudice any of such participating air carriers or foreign air carriers.

(b) No air carrier or foreign air carrier shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in air transportation in any respect whatsoever or subject any particular person, port, locality, or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

(Pub. L. 85-726, title IV, § 404, Aug. 23, 1958, 72 Stat. 760; Pub. L. 92-259, § 1, Mar. 22, 1972, 86 Stat. 95.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92-259 designated existing provisions as par. (1) and added par. (2).

INTERNATIONAL AGREEMENTS

Subsec. (a)(2) of this section not to be deemed to authorize any actions inconsistent with the provisions of section 1502 of this title, see section 4 of Pub. L. 92-259, set out as a note under section 1482 of this title.

§ 1375. Transportation of mail

(a) Postal rules and regulations

The Postmaster General is authorized to make such rules and regulations, not inconsistent with the provisons of this chapter, or any order, rule, or regulation made by the Board thereunder, as may be necessary for the safe and expeditious carriage of mail by aircraft.

(b) Mail schedules

Each air carrier shall, from time to time, file with the Board and the Postmaster General a statement showing the points between which such air carrier is authorized to engage in air transportation, and all schedules, and all changes therein, of aircraft regularly operated by the carrier between such points, setting forth in respect of each such schedule the points served thereby and the time of arrival and departure at each such point. The Postmaster General may designate any such schedule for the transportation of mail between the points between which the air carrier is authorized by its certificate to transport mail, and may, by order, require the air carrier to establish additional schedules for the transportation of mail between such points. No change shall be made in any schedules designated or ordered to be established by the Postmaster General except upon ten days' notice thereof filed as herein provided. The Postmaster General may by order disapprove any such change or alter, amend, or modify any such schedule or change. No order of the Postmaster General under this subsection shall become effective until ten days after its issuance. Any person who would be aggrieved by any such order of the Postmaster

General under this subsection may, before the expiration of such ten-day period, apply to the Baord, under such regulations as it may prescribe, for a review of such order. The Board may review, and, if the public convenience and necessity so require, amend, revise, suspend, or cancel such order; and, pending such review and the determination thereof, may postpone the effective date of such order. The Board shall give preference to proceedings under this subsection over all proceedings pending before it. No air carrier shall transport mail in accordance with any schedule other than a schedule designated or ordered to be established under this subsection for the transportation of mail.

(c) Maximum mail load

The Board may fix the maximum mail load for any schedule or for any aircraft or any type of aircraft; but, in the event that mail in excess of the maximum load is tendered by the Postmaster General for transportation by any air carrier in accordance with any schedule designated or ordered to be established by the Postmaster General under subsection (b) of this section for the transportation of mail, such air carrier shall, to the extent such air carrier is reasonably able as determined by the Board, furnish facilities sufficient to transport, and shall transport, such mail as nearly in accordance with such scheule as the Board shall determine to be possible.

(d) Tender of mail

From and after the issuance of any certificate authorizing the transportation of mail by aircraft, the Postmaster General shall tender mail to the holder thereof, to the extent required by the United States Postal Service, for transportation between the points named in such certificate for the transportation of mail, and such mail shall be transported by the air carrier holding such certificate in accordance with such rules, regulations, and requirements as may be promulgated by the Postmaster General under this section.

(e) Foreign postal arrangement

(1) Nothing in this chapter shall be deemed to abrogate or affect any arrangement made by the United States with the postal administration of any foreign country with respect to transportation of mail by aircraft, or to impair the authority of the Postmaster General to enter into any such arrangement with the postal administration of any foreign country.

(2) The Postmaster General may, in any case where service may be necessary by a person not a citizen of the United States who may not be obligated to transport the mail for a foreign country, make arrangements, without advertising, with such person for transporting mail by aircraft to or within any foreign country.

(f) Transportation of foreign mail

(1) Any air carrier holding a certificate to engage in foreign air transportation and transporting mails of foreign countries shall transport such mails subject to control and regulations by the United States. The Postmaster General shall from time to time fix the rates of compensation that shall be charged the respective foreign countries for the transportation of their mails by such air carriers, and such rates shall be put into effect by the Postmaster General in accordance with the provisions of the postal convention regulating the postal relations between the United States and the respective foreign countries, or as provided hereinafter in this subsection. In any case where the Postmaster General deems such action to be in the public interest, he may approve rates provided in arrangements between any such air carrier and any foreign country covering the transportation of mails of such country, under which mails of such country have been carried on scheduled operations prior to January 1, 1938, or in extensions or modifications of such arrangements, and may permit any such air carrier to enter into arrangements with any foreign country for the transportation of its mails at rates fixed by the Postmaster General in advance of the making of any such arrangement. The Postmaster General may authorize any such air carrier, under such limitations as the Postmaster General may prescribe, to change the rates to be charged any foreign country for the transportation of its mails by such air carrier within that country or between that country and another foreign country.

(2) In any case where such air carrier has an arrangement with any foreign country for transporting its mails, made or approved in accordance with the provisions of paragraph (1) of this subsection, it shall collect its compensation from the foreign country under its arrangement, and in case of the absence of any arrangement between the air carrier and the foreign country consistent with this subsection, the collections made from the foreign country by the United States shall be for the account of such air carrier: *Provided*, That no such air carrier shall be entitled to receive compensation both from such foreign country and from the United States in respect of the transportation of the same mail or the same mails of foreign countries.

(g) Evidence of performance of mail service

Air carriers transporting or handling United States mail shall submit, under signature of a duly authorized official, when and in such form as may be required by the Postmaster General, evidence of the performance of mail service; and air carriers transporting or handling mails of foreign countries shall submit, under signature of a duly authorized official, when and in such form as may be required by the Postmaster General, evidence of the amount of such mails transported or handled, and the compensation payable and received therefor.

(h) Emergency mail service

In the event of emergency caused by flood, fire, or other calamitous visitation, the Postmaster General is authorized to contract, without advertising, for the transportation by aircraft of any or all classes of mail to or from localities affected by such calamity, where available facilities of persons authorized to transport mail to or from such localities are inadequate to meet the requirements of the United States Postal Service during such emergency. Such contracts may be only for such periods as may be necessitated, for the maintenance of mail service, by the inadequacy of such other facilities. No operation pursuant to any such con-

tract, for such period, shall be air transportation within the purview of this chapter. Payment of compensation for service performed under such contracts shall be made, at rates provided in such contracts, from appropriations for the transportation of mail by the means normally used for transporting the mail transported under such contracts.

(i) Experimental airmail service

Nothing contained in this chapter shall be construed to repeal in whole or in part the provisions of section 5402 of title 39. The transportation of mail under contracts entered into under such section shall not, except for sections 1371(k) and 1386(b) of this title, be deemed to be "air transportation" as used in this chapter, and the rates of compensation for such transportation of mail shall not be fixed under this chapter.

(j) Free travel for postal employees

Every air carrier carrying the mails shall carry on any plane that it operates and without charge therefor, the persons in charge of the mails when on duty, and such duly accredited agents and officers of the United States Postal Service, and post office inspectors, while traveling on official business relating to the transportation of mail by aircraft, as the Board may by regulation prescribe, upon the exhibition of their credentials.

(Pub. L. 85-726, title IV, § 405, Aug. 23, 1958, 72 Stat. 760.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (e)(1), (h), and (i), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

CODIFICATION

In subsec. (i), "section 5402 of title 39" was substituted for "section 6303 of title 39" on authority of section 6(q) of Pub. L. 91-375, Aug. 12, 1970, 84 Stat. 783, section 2 of which enacted Title 39, Postal Service. "Section 6303 of title 39" had previously been substituted for "section 470 of title 39" on authority of section 5 of Pub. L. 86-682, Sept. 2, 1960, 74 Stat. 705, section 1 of which enacted former Title 39, The Postal Service.

CHANGE OF NAME

In subsecs. (d), (h), and (j), "United States Postal Service" was substituted for "Post Office Department" and "Postal Service" pursuant to Pub. L. 91-375, § 6(o), Aug. 12, 1970, 84 Stat. 733, set out as a note preceding section 101 of Title 39, Postal Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1376 of this title.

§ 1376. Rates for transportation of mail

(a) Authorization to fix rates

The Board is empowered and directed, upon its own initiative or upon petition of the Postmaster General or an air carrier, (1) to fix and determine from time to time, after notice and hearing, the fair and reasonable rates of compensation for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith (including the transportation of mail by an air carrier by other means than aircraft whenever such transportation is incidental to the transportation of mail by aircraft or is made necessary by conditions of emergency arising from aircraft operation), by each holder of a certificate authorizing the transportation of mail by aircraft, and to make such rates effective from such date as it shall determine to be proper; (2) to prescribe the method or methods, by aircraft-mile, pound-mile, weight, space, or any combination thereof, or otherwise, for ascertaining such rates of compensation for each air carrier or class of air carriers; and (3) to publish the same.

(b) Rate making elements

In fixing and determining fair and reasonable rates of compensation under this section, the Board, considering the conditions peculiar to transportation by aircraft and to the particular air carrier or class of air carriers, may fix different rates for different air carriers or classes of air carriers, and different classes of service. In determining the rate in each case, the Board shall take into consideration, among other factors, (1) the condition that such air carriers may hold and operate under certificates authorizing the carriage of mail only by providing necessary and adequate facilities and service for the transportation of mail; (2) such standards respecting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law; and (3) the need of each such air carrier (other than a supplemental air carrier) for compensation for the transportation of mail sufficient to insure the performance of such service, and, together with all other revenue of the air carrier, to enable such air carrier under honest, economical, and efficient management, to maintain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the United States Postal Service, and the national defense. In applying clause (3) of this subsection, the Board shall take into consideration any standards and criteria prescribed by the Secretary of Transportation, for determining the character and quality of transportation required for the commerce of the United States and the national defense.

(c) Payments for transportation of mail

The Postmaster General shall make payments out of appropriations for the transportation of mail by aircraft of so much of the total compensation as is fixed and determined by the Board under this section without regard to clause (3) of subsection (b) of this section. The Board shall make payments of the remainder of the total compensation payable under this section out of appropriations made to the Board for that purpose.

(d) Treatment of proceeds of disposition of certain property

In determining the need of an air carrier for compensation for the transportation of mail, and such carrier's "other revenue" for the purpose of this section, the Board shall not take into account—

(1) gains derived from the sale or other disposition of flight equipment if (A) the carrier notifies the Board in writing that it has invested or intends to reinvest the gains (less

applicable expenses and taxes) derived from such sale or other disposition in flight equipment, and (B) submits evidence in the manner prescribed by the Board that an amount equal to such gains (less applicable expenses and taxes) has been expended for purchase of flight equipment or has been deposited in a special reequipment fund, or

(2) losses sustained from the sale or other disposition of flight equipment.

Any amounts so deposited in a reequipment fund as above provided shall be used solely for investment in flight equipment either through payments on account of the purchase price or construction of flight equipment or in retirement of debt contracted for the purchase or construction of flight equipment, and unless so reinvested within such reasonable time as the Board may prescribe, the carrier shall not have the benefit of this paragraph. Amounts so deposited in the reequipment fund shall not be included as part of the carrier's used and useful investment for purposes of this section until expended as provided above: *Provided,* That the flight equipment in which said gains may be invested shall not include equipment delivered to the carrier prior to April 6, 1956: *Provided further,* That the provisions of this subsection shall be effective as to all capital gains or losses realized on and after April 6, 1956, with respect to the sale or other disposition of flight equipment whether or not the Board shall have entered a final order taking account thereof in determining all other revenue of the air carrier.

(e) Statements of Postmaster General and carrier

Any petition for the fixing of fair and reasonable rates of compensation under this section shall include a statement of the rate the petitioner believes to be fair and reasonable. The Postmaster General shall introduce as part of the record in all proceedings under this section a comprehensive statement of all service to be required of the air carrier and such other information in his possession as may be deemed by the Board to be material to the inquiry.

(f) Weighing of mail

The Postmaster General may weigh the mail transported by aircraft and make such computations for statistical and administrative purposes as may be required in the interest of the mail service. The Postmaster General is authorized to employ such clerical and other assistance as may be required in connection with proceedings under this chapter. If the Board shall determine that it is necessary or advisable, in order to carry out the provisions of this chapter, to have additional and more frequent weighing of the mails, the Postmaster General, upon request of the Board shall provide therefor in like manner, but such weighing need not be for continuous periods of more than thirty days.

(g) Availability of appropriations

Except as otherwise provided in section 1375(h) of this title, the unexpended balances of all appropriations for the transportation of mail by aircraft pursuant to contracts entered into under the Air Mail Act of 1934, as amended, and the unexpended balances of all appropriations available for the transportation of mail by aircraft in Alaska, shall be available, in addition to the purposes stated in such appropriations, for the payment of compensation by the Postmaster General as provided in this chapter, for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between points in the continental United States or between points in Hawaii or in Alaska or between points in the continental United States and points in Canada within one hundred and fifty miles of the international boundary line. Except as otherwise provided in section 1375(h) of this title, the unexpended balances of all appropriations for the transportation of mail by aircraft pursuant to contracts entered into under the Act of March 8, 1928, as amended, shall be available, in addition to the purposes stated in such appropriations, for payment to be made by the Postmaster General, as provided by this chapter, in respect of the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between points in the United States and points outside thereof, or between points in the continental United States and Territories or possessions of the United States, or between Territories or possessions of the United States.

(h) Payments to foreign air carriers; rates pursuant to Universal Postal Union Convention; criteria for changes in rates by Civil Aeronautics Board

(1) In any case where air transportation is performed between the United States and any foreign country, both by aircraft owned or operated by one or more air carriers holding a certificate under this subchapter and by aircraft owned or operated by one or more foreign air carriers, the Postmaster General shall not pay to or for the account of any such foreign air carrier a rate of compensation for transporting mail by aircraft between the United States and such foreign country, which, in his opinion, will result (over such reasonable period as the Postmaster General may determine, taking account of exchange fluctuations and other factors) in such foreign air carrier receiving a higher rate of compensation for transporting such mail than such foreign country pays to air carriers for transporting its mail by aircraft between such foreign country and the United States, or receiving a higher rate of compensation for transporting such mail than a rate determined by the Postmaster General to be comparable to the rate such foreign country pays to air carriers for transporting its mail by aircraft between such foreign country and intermediate country on the route of such air carrier between such foreign country and the United States.

(2) The Secretary of State and the Postmaster General each shall take all necessary and appropriate actions to assure that the rates paid for the transportation of mail pursuant to the Universal Postal Union Convention shall not be higher than fair and reasonable rates for such services. The Secretary of State and the Postmaster General shall oppose any present or proposed Universal Postal Union rates which are higher than such fair and reasonable rates.

(3) The Civil Aeronautics Board shall act expeditiously on any proposed changes in rates for the transportation of mail by aircraft in foreign air transportation. In establishing such

rates, the Board shall take into consideration rates paid for transportation of mail pursuant to the Universal Postal Union Convention as ratified by the United States Government, shall take into account all of the rate-making elements employed by the Universal Postal Union in fixing its airmail rates, and shall further consider the competitive disadvantage to United States flag air carriers resulting from foreign air carriers receiving Universal Postal Union rates for the carriage of United States mail and the national origin mail of their own countries.

(Pub. L. 85-726, title IV, § 406, Aug. 23, 1958, 72 Stat. 763; Pub. L. 87-528, § 5, July 10, 1962, 76 Stat. 145; Pub. L. 89-670, § 8(a), Oct. 15, 1966, 80 Stat. 942; Pub. L. 93-623, § 4, Jan. 3, 1975, 88 Stat. 2103.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (f) and (g), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

The Air Mail Act of 1934, as amended, referred to in subsec. (g), probably means act Mar. 27, 1934, ch. 100, 48 Stat. 508, which is not classified to this Code.

The act of Mar. 8, 1928, as amended, referred to in subsec. (g), means act Mar. 8, 1928, ch. 149, 45 Stat. 248, which enacted sections 465a and 465b of former Title 39, The Postal Service, and which was repealed by act June 23, 1938, ch. 601, § 1107(k), 52 Stat. 1029.

AMENDMENTS

1975—Subsec. (h). Pub. L. 93-623 designated existing provisions as par. (1), and added pars. (2) and (3).

1966—Subsec. (b). Pub. L. 89-670 provided that, in applying clause (3), the Board shall take into consideration any standards and criteria prescribed by the Secretary of Transportation, for determining the character and quality of transportation required for the commerce of the United States and the national defense.

1962—Subsec. (b). Pub. L. 87-528 inserted "(other than a supplemental air carrier)" following "each such air carrier" in cl. (3).

CHANGE OF NAME

In subsec. (b), "United States" Postal Service was substituted for "Postal Service" pursuant to Pub. L. 91-375, § 6(o), Aug. 12, 1970, 84 Stat. 733, set out as a note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-670 effective 90 days after the Secretary of Transportation first takes office, or on any earlier date after Oct. 15, 1966, as the President prescribes and publishes in the Federal Register, see section 15(a) of Pub. L. 89-670, set out as an Effective Date note under section 1651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 section 3401.

§ 1377. Accounts, records, and reports

(a) Filing of reports

The Board is empowered to require annual, monthly, periodical and special reports from any air carrier; to prescribe the manner and form in which such reports shall be made; and to require from any air carrier specific answers to all questions upon which the Board may deem information to be necessary. Such reports shall be under oath whenever the Board so requires. The Board may also require any air carrier to file with it a true copy of each or any contract, agreement, understanding, or arrangement, between such air carrier and any other carrier or person, in relation to any traffic affected by the provisions of this chapter.

(b) Disclosure of stock ownership

Each air carrier shall submit annually, and at such other times as the Board shall require, a list showing the names of each of its stockholders or members holding more than 5 per centum of the entire capital stock or capital, as the case may be, of such air carrier, together with the name of any person for whose account, if other than the holder, such stock is held; and a report setting forth a description of the shares of stock, or other interest, held by such air carrier, or for its account, in persons other than itself. Any person owning, beneficially or as trustee, more than 5 per centum of any class of the capital stock or capital, as the case may be, of an air carrier shall submit annually, and at such other times as the Board may require, a description of the shares of stock or other interest owned by such person, and the amount thereof.

(c) Disclosure of stock ownership by officer or director

Each officer and director of an air carrier shall annually and at such other times as the Board shall require transmit to the Board a report describing the shares of stock or other interests held by him in any air carrier, any person engaged in any phase of aeronautics, or any common carrier, and in any person whose principal business, in purpose or in fact, is the holding of stock in, or control of, air carriers, other persons engaged in any phase of aeronautics, or common carriers.

(d) Form of accounts, records, and memoranda

The Board shall prescribe the forms of any and all accounts, records, and memoranda to be kept by air carriers, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of money, and the length of time such accounts, records, and memoranda shall be preserved; and it shall be unlawful for air carriers to keep any accounts, records, or memoranda other than those prescribed or approved by the Board: *Provided*, That any air carrier may keep additional accounts, records, or memoranda if they do not impair the integrity of the accounts, records, or memoranda prescribed or approved by the Board and do not constitute an undue financial burden on such air carrier.

(e) Inspection of property and accounts

The Board shall at all times have access to all lands, buildings, and equipment of any air carrier or foreign air carrier and to all accounts, records, and memorandums, including all documents, papers, and correspondence, now or hereafter existing, and kept or required to be kept by air carriers, foreign air carriers, or ticket agents and it may employ special agents or auditors, who shall have authority under the orders of the Board to inspect and examine any and all such lands, buildings, equipment, accounts, records, and memorandums. The provisions of this section shall apply, to the extent found by the Board to be reasonably necessary

for the administration of this chapter, to persons having control over any air carrier, or affiliated with any air carrier within the meaning of section 5(8) of this title.

(Pub. L. 85-726, title IV, § 407, Aug. 23, 1958, 72 Stat. 766; Pub. L. 91-62, § 1(1), Aug. 20, 1969, 83 Stat. 103; Pub. L. 93-623, § 7(b), Jan. 3, 1975 88 Stat. 2105.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

Section 5(8) of this title, referred to in subsec. (e), probably should be section 5(7) of this title which defines affiliation with a carrier.

AMENDMENTS

1975—Subsec. (e). Pub. L. 93-623 substituted "air carrier or foreign air carrier" for "carrier" and "air carriers, foreign air carriers, or ticket agents" for "air carriers".

1969—Subsec. (b). Pub. L. 91-62 added the provision requiring any person owning, beneficially or as trustee, more than 5 per centum of any class of capital stock or capital of an air carrier to submit annually, and at such other times as the Board requires, a description of the shares of stock or other interest owned by such person, and the amount thereof.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 2 of Pub. L. 91-62 provided that: "The amendments made by this Act [amending this section and section 1378 of this title] shall take effect as of August 5, 1969."

§ 1378. Consolidation, merger, and acquisition of control

(a) Prohibited acts

It shall be unlawful unless approved by order of the Board as provided in this section—

(1) For two or more air carriers, or for any air carrier and any other common carrier or any person engaged in any other phase of aeronautics, to consolidate or merge their properties, or any part thereof, into one person for the ownership, management, or operation of the properties theretofore in separate ownerships;

(2) For any air carrier, any person controlling an air carrier, any other common carrier, or any person engaged in any other phase of aeronautics, to purchase, lease, or contract to operate the properties, or any substantial part thereof, of any air carrier;

(3) For any air carrier or person controlling an air carrier to purchase, lease, or contract to operate the properties, or any substantial part thereof, of any person engaged in any phase of aeronautics otherwise than as an air carrier;

(4) For any foreign air carrier or person controlling a foreign air carrier to acquire control, in any manner whatsoever, of any citizen of the United States engaged in any phase of aeronautics;

(5) For any air carrier or person controlling an air carrier, any other common carrier, any person engaged in any other phase of aeronautics, or any other person to acquire control of any air carrier in any manner whatsoever: *Provided,* That the Board may be order exempt any such acquisition of a noncertificated air carrier from this requirement to the extent and for such periods as may be in the public interest;

(6) For any air carrier or person controlling an air carrier to acquire control, in any manner whatsoever, of any person engaged in any phase of aeronautics otherwise than as an air carrier; or

(7) For any person to continue to maintain any relationship established in violation of any of the foregoing subdivisions of this subsection.

(b) Application to Board; hearing; approval; disposal without hearing

Any person seeking approval of a consolidation, merger, purchase, lease, operating contract, or acquisition of control, specified in subsection (a) of this section, shall present an application to the Board, and thereupon the Board shall notify the persons involved in the consolidation, merger, purchase, lease, operating contract, or acquisition of control, and other persons known to have a substantial interest in the proceeding, of the time and place of a public hearing. Unless, after such hearing, the Board finds that the consolidation, merger, purchase, lease, operating contract, or acquisition of control will not be consistent with the public interest or that the conditions of this section will not be fulfilled, it shall by order approve such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe: *Provided,* That the Board shall not approve any consolidation, merger, purchase, lease, operating contract, or acquisition of control which would result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party to the consolidation, merger, purchase, lease, operating contract, or acquisition of control: *Provided further,* That if the applicant is a carrier other than an air carrier, or a person controlled by a carrier other than an air carrier or affiliated therewith within the meaning of section 5(8) of this title, such applicant shall for the purposes of this section be considered an air carrier and the Board shall not enter such an order of approval unless it finds that the transaction proposed will promote the public interest by enabling such carrier other than an air carrier to use aircraft to public advantage in its operation and will not restrain competition: *Provided further,* That, in any case in which the Board determines that the transaction which is the subject of the application does not affect the control of an air carrier directly engaged in the operation of aircraft in air transportation, does not result in creating a monopoly, and does not tend to restrain competition, and determines that no person disclosing a substantial interest then currently is requesting a hearing, the Board, after publication in the Federal Register of notice of the Board's intention to dispose of such application without a hearing (a copy of which notice shall be furnished by the Board to the Attorney General not later than the day following the date of such publication), may de-

termine that the public interest does not require a hearing and by order approve or disapprove such transaction.

(c) Interests in ground facilities

The provisions of this section and section 1379 of this title shall not apply with respect to the acquisition or holding by any air carrier, or any officer or director thereof, of (1) any interest in any ticket office, landing area, hangar, or other ground facility reasonably incidental to the performance by such air carrier of any of its services, or (2) any stock or other interest or any office or directorship in any person whose principal business is the maintenance or operation of any such ticket office, landing area, hangar, or other ground facility.

(d) Jurisdiction of accounts of noncarriers

Whenever, after the effective date of this section, a person, not an air carrier, is authorized, pursuant to this section, to acquire control of an air carrier, such person thereafter shall, to the extent found by the Board to be reasonably necessary for the administration of this chapter, be subject, in the same manner as if such person were an air carrier, to the provisions of this chapter relating to accounts, records, and reports, and the inspection of facilities and records, including the penalties applicable in the case of violations thereof.

(e) Investigation of violations

The Board is empowered, upon complaint or upon its own initiative, to investigate and, after notice and hearing, to determine whether any person is violating any provision of subsection (a) of this section. If the Board finds after such hearing that such person is violating any provision of such subsection, it shall by order require such person to take such action, consistent with the provisions of this chapter, as may be necessary, in the opinion of the Board, to prevent further violation of such provision.

(f) Presumption of control; beneficial ownership

For the purposes of this section, any person owning beneficially 10 per centum or more of the voting securities or capital, as the case may be, of an air carrier shall be presumed to be in control of such air carrier unless the Board finds otherwise. As used herein, beneficial ownership of 10 per centum of the voting securities of a carrier means ownership of such amount of its outstanding voting securities as entitles the holder thereof to cast 10 per centum of the aggregate votes which the holders of all the outstanding voting securities of such carrier are entitled to cast.

(Pub. L. 85-726, title IV, § 408, Aug. 23, 1958, 72 Stat. 767; Pub. L. 86-758, § 1, Sept. 13, 1960, 74 Stat. 901; Pub. L. 91-62, § 1(2), (3)(A), Aug. 20, 1969, 83 Stat. 103, 104.)

REFERENCES IN TEXT

Section 5(8) of this title, referred to in subsec. (b), probably should be section 5(7) of this title which defines affiliation with a carrier.

This chapter, referred to in subsecs. (d) and (e), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

AMENDMENTS

1969—Subsec. (a)(5). Pub. L. 91-62, § 1(2), added "or any other person" following "phase of aeronautics", and the proviso authorizing the Board to exempt any acquisition of a noncertificated air carrier from the prohibition of this subsection to the extent and for such periods as may be in the public interest.

Subsec. (f). Pub. L. 91-62, § 1(3)(A), added subsec. (f).

1960—Subsec. (b). Pub. L. 86-758 added the proviso permitting the Board to dispose of an application without a hearing, where it does not affect the control of an air carrier directly engaged in operating aircraft in air transportation, does not create a monopoly or restrain competition, where no one with a substantial interest is currently requesting a hearing, and publication in the Federal Register of such intention to dispose is made.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-62 effective Aug. 5, 1969, see section 2 of Pub. L. 91-62, set out as an Effective Date of 1969 Amendment note under section 1377 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 2 of Pub. L. 86-758 provided that: "The amendment made by the first section of this Act [to subsec. (b) of this section] shall apply only with respect to applications submitted to the Civil Aeronautics Board on or after the date of enactment of this Act [Sept. 13, 1960]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1384 of this title.

§ 1379. Prohibited interests; interlocking relationships; profit from transfer of securities

(a) It shall be unlawful, unless such relationship shall have been approved by order of the Board upon due showing, in the form and manner prescribed by the Board, that the public interest will not be adversely affected thereby—

(1) For any air carrier to have and retain an officer or director who is an officer, director, or member, or who as a stockholder holds a controlling interest, in any other person who is a common carrier or is engaged in any phase of aeronautics.

(2) For any air carrier, knowingly and willfully, to have and retain an officer or director who has a representative or nominee who represents such officer or director as an officer, director, or member, or as a stockholder holding a controlling interest, in any other person who is a common carrier or is engaged in any phase of aeronautics.

(3) For any person who is an officer or director of an air carrier to hold the position of officer, director, or member, or to be a stockholder holding a controlling interest, or to have a representative or nominee who represents such person as an officer, director, or member, or as a stockholder holding a controlling interest, in any other person who is a common carrier or is engaged in any phase of aeronautics.

(4) For any air carrier to have and retain an officer or director who is an officer, director, or member, or who as a stockholder holds a controlling interest, in any person whose principal business, in purpose or in fact, is the holding of stock in, or control of, any other person engaged in any phase of aeronautics.

(5) For any air carrier, knowingly and willfully, to have and retain an officer or director who has a representative or nominee who represents such officer or director as an officer, director, or member, or as a stockholder holding a controlling interest, in any person whose principal business, in purpose or in fact, is the holding of stock in, or control of, any other person engaged in any phase of aeronautics.

(6) For any person who is an officer or director of an air carrier to hold the position of officer, director, or member, or to be a stockholder holding a controlling interest, or to have a representative or nominee who represents such person as an officer, director, or member, or as a stockholder holding a controlling interest, in any person whose principal business, in purpose or in fact, is the holding of stock in, or control of, any other person engaged in any phase of aeronautics.

(b) It shall be unlawful for any officer or director of any air carrier to receive for his own benefit, directly or indirectly, any money or thing of value in respect of negotiation, hypothecation, or sale of any securities issued or to be issued by such carrier, or to share in any of the proceeds thereof.

(Pub. L. 85–726, title IV, § 409, Aug. 23, 1958, 72 Stat. 768.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1378, 1384 of this title.

§ 1380. Loans and financial aid; aircraft loan guarantees

The Board is empowered to approve or disapprove, in whole or in part, any and all applications made after the effective date of this section for or in connection with any loan or other financial aid from the United States or any agency thereof to, or for the benefit of, any air carrier. No such loan or financial aid shall be made or given without such approval, and the terms and conditions upon which such loan or financial aid is provided shall be prescribed by the Board. The provisions of this section shall not be applicable to the guaranty of loans by the Secretary of Transportation under the provisions of such Act of September 7, 1957, as amended, but the Secretary of Transportation shall consult with and consider the views and recommendations of the Board in making such guaranties.

(Pub. L. 85–726, title IV, § 410, Aug. 23, 1958, 72 Stat. 769; Pub. L. 87–820, § 8, Oct. 15, 1962, 76 Stat. 936; Pub. L. 89–670, § 6(a)(3)(B), Oct. 15, 1966, 80 Stat. 937.)

REFERENCES IN TEXT

For effective date of this section, referred to in text, see section 1505(2) of Pub. L. 85–726, set out as an Effective Date note under section 1301 of this title.

Act of September 7, 1957, as amended, referred to in text, is Pub. L. 85–307, Sept. 7, 1957, 71 Stat. 629, which is set out as a Guaranty of Loans for Purchase of Aircraft and Equipment note under section 1324 of this title.

AMENDMENTS

1962—Pub. L. 87–820 added the aircraft loan guarantee provisions.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" has been substituted for "Secretary of Commerce" pursuant to Pub. L. 89–670, § 6(a)(3)(B), Oct. 15, 1966, 80 Stat. 937, which transferred all functions, powers, and duties of the Secretary of Commerce and other offices and officers of the Department of Commerce under this section relating generally to aircraft to the Secretary of Transportation. See section 1655(a)(3)(B) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1655 of this title.

§ 1381. Methods of competition

The Board may, upon its own initiative or upon complaint by any air carrier, foreign air carrier, or ticket agent, if it considers that such action by it would be in the interest of the public, investigate and determine whether any air carrier, foreign air carrier, or ticket agent has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. If the Board shall find, after notice and hearing, that such air carrier, foreign air carrier, or ticket agent is engaged in such unfair or deceptive practices or unfair methods of competition, it shall order such air carrier, foreign air carrier, or ticket agent to cease and desist from such practices or methods of competition.

(Pub. L. 85–726, title IV, § 411, Aug. 23, 1958, 72 Stat. 769.)

§ 1382. Pooling and other agreements; filing; approval by Board

(a) Every air carrier shall file with the Board a true copy, or, if oral, a true and complete memorandum, of every contract or agreement (whether enforceable by provisions for liquidated damages, penalties, bonds, or otherwise) affecting air transportation and in force on the effective date of this section or hereafter entered into, or any modification or cancellation thereof, between such air carrier and any other air carrier, foreign air carrier, or other carrier for pooling or apportioning earnings, losses, traffic, service, or equipment, or relating to the establishment of transportation rates, fares, charges, or classifications, or for preserving and improving safety, economy, and efficiency of operation, or for controlling, regulating, preventing, or otherwise eliminating destructive, oppressive, or wasteful competition, or for regulating stops, schedules, and character of service, or for other cooperative working arrangements.

(b) The Board shall by order disapprove any such contract or agreement, whether or not previously approved by it, that it finds to be adverse to the public interest, or in violation of this chapter, and shall by order approve any such contract or agreement, or any modification or cancellation thereof, that it does not find to be adverse to the public interest, or in violation of this chapter; except that the Board may not approve any contract or agreement between an air carrier not directly engaged in the operation of aircraft in air transportation and a

common carrier subject to the Interstate Commerce Act, as amended, governing the compensation to be received by such common carrier for transportation services performed by it.

(Pub. L. 85-726, title IV, § 412, Aug. 23, 1958, 72 Stat. 770.)

REFERENCES IN TEXT

For effective date of this section, referred to in subsec. (a), see section 1505(2) of Pub. L. 85-726, set out as an Effective Date note under section 1301 of this title.

This chapter, referred to in subsec. (b), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

The Interstate Commerce Act, as amended, referred to in subsec. (b), is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, which is classified generally to chapters 1, 8, 12, 13, and 19 (§§ 1 et seq., 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1384 of this title.

§ 1383. Form of control

For the purposes of this subchapter, whenever reference is made to control, it is immaterial whether such control is direct or indirect.

(Pub. L. 85-726, title IV, § 413, Aug. 23, 1958, 72 Stat. 770.)

§ 1384. Legal restraints

Any person affected by any order made under sections 1378, 1379, or 1382 of this title shall be, and is hereby, relieved from the operations of the "antitrust laws", as designated in section 12 of title 15, and of all other restraints or prohibitions made by, or imposed under, authority of law, insofar as may be necessary to enable such person to do anything authorized, approved, or required by such order.

(Pub. L. 85-726, title IV, § 414, Aug. 23, 1958, 72 Stat. 770.)

§ 1385. Inquiry into air carrier management

For the purpose of exercising and performing its powers and duties under this chapter, the Board is empowered to inquire into the management of the business of any air carrier and, to the extent reasonably necessary for any such inquiry, to obtain from such carrier, and from any person controlling or controlled by, or under common control with, such air carrier, full and complete reports and other information.

(Pub. L. 85-726, title IV, § 415, Aug. 23, 1958, 72 Stat. 770.)

REFERENCES IN TEXT

This chapter, referred to in text, read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Civil Aeronautics Board and the Chairman, members, offices, and officers thereof under subchapters VI and VII of this chapter were transferred to the Secretary of Transportation by Pub. L. 89-670, § 6(d), Oct. 15, 1966, 80 Stat. 937, to be exercised by the National Transportation Safety Board. See sections 1655(d) and 1903(a)(3)(A), (9) of this title.

§ 1386. Classification and exemption of carriers

(a) The Board may from time to time establish such just and reasonable classifications or groups of air carriers for the purposes of this subchapter as the nature of the services performed by such air carriers shall require; and such just and reasonable rules and regulations, pursuant to and consistent with the provisions of this subchapter, to be observed by each such class or group, as the Board finds necessary in the public interest.

(b)(1) The Board, from time to time and to the extent necessary, may (except as provided in paragraph (2) of this subsection) exempt from the requirements of this subchapter or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder, any air carrier or class of air carriers, if it finds that the enforcement of this subchapter or such provision, or such rule, regulation, term, condition, or limitation is or would be an undue burden on such air carrier or class of air carriers by reason of the limited extent of, or unusual circumstances affecting, the operations of such air carrier or class of air carriers and is not in the public interest.

(2) The Board shall not exempt any air carrier from any provision of subsection (k) of section 1371 of this title, except that (A) any air carrier not engaged in scheduled air transportation, and (B), to the extent that the operations of such air carrier are conducted during daylight hours, any air carrier engaged in scheduled air transportation, may be exempted from the provisions of paragraphs (1) and (2) of such subsection if the Board finds, after notice and hearing, that, by reason of the limited extent of, or unusual circumstances affecting, the operations of any such air carrier, the enforcement of such paragraphs is or would be such an undue burden on such air carrier as to obstruct its development and prevent it from beginning or continuing operations, and that the exemption of such air carrier from such paragraphs would not adversely affect the public interest: *Provided*, That nothing in this subsection shall be deemed to authorize the Board to exempt any air carrier from any requirement of this subchapter, or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder which provides for maximum flying hours for pilots or copilots.

(Pub. L. 85-726, title IV, § 416, Aug. 23, 1958, 72 Stat. 771.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1375 of this title; title 39 section 5402.

§ 1387. Special operating authorizations

(a) Authority of Board to issue

If the Board finds upon an investigation conducted on its own initiative or upon request of an air carrier—

(1) that the capacity for air transportation being offered by the holder of a certificate of public convenience and necessity between particular points in the United States is, or will be, temporarily insufficient to meet the requirements of the public or the postal service; or

(2) that there is a temporary requirement for air transportation between two points, one or both of which is not regularly served by any air carrier; and

(3) that any supplemental air carrier can provide the additional service temporarily required in the public interest;

the Board may issue to such supplemental air carrier a special operating authorization to engage in air transportation between such points.

(b) Terms of authorization

A special operating authorization issued under this section—

(1) shall contain such limitations or requirements as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized will alleviate the insufficiency which otherwise would exist, without significant diversion of traffic from the holders of certificates for the route;

(2) shall be valid for not more than thirty days and may be extended for additional periods aggregating not more than sixty days; and

(3) shall not be deemed a license within the meaning of section 558(c) of title 5.

(c) Procedure

The Board shall by regulation establish procedures for the expeditious investigation and determination of requests for such special operating authorizations. Such procedures shall include written notice to air carriers certificated to provide service between the points involved, and shall provide for such opportunity to protest the application in writing, and at the Board's discretion to be heard orally in support of such protest, as will not unduly delay issuance of such special operating authorization, taking into account the degree of emergency involved.

(Pub. L. 85-726, title IV, § 417, as added Pub. L. 87-528, § 6, July 10, 1962, 76 Stat. 145.)

CODIFICATION

In subsec. (b), "section 558(c) of title 5" was substituted for "section 9(b) of the Administrative Procedure Act (5 U.S.C. 1008(b))" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1371 of this title.

SUBCHAPTER V—NATIONALITY AND OWNERSHIP OF AIRCRAFT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1471, 1472 of this title; title 26 section 4492.

§ 1401. Registration of aircraft nationality

(a) Necessity; aircraft of national-defense forces; transfer of ownership

It shall be unlawful for any person to operate or navigate any aircraft eligible for registration if such aircraft is not registered by its owner as provided in this section, or (except as provided in section 1508 of this title) to operate or navigate within the United States any aircraft not eligible for registration: *Provided*, That aircraft of the national-defense forces of the United States may be operated and navigated without being so registered if such aircraft are identified, by the agency having jurisdiction over them, in a manner satisfactory to the Secretary of Transportation. The Secretary of Transportation may, by regulation, permit the operation and navigation of aircraft without registration by the owner for such reasonable periods after transfer of ownership thereof as the Secretary may prescribe.

(b) Eligibility for registration

An aircraft shall be eligible for registration if, but only if—

(1) It is owned by a citizen of the United States and it is not registered under the laws of any foreign country; or

(2) It is an aircraft of the Federal Government, or of a State, Territory, or possession of the United States, or the District of Columbia, or of a political subdivision thereof.

(c) Issuance of certificate

Upon request of the owner of any aircraft eligible for registration, such aircraft shall be registered by the Secretary of Transportation and the Secretary shall issue to the owner thereof a certificate of registration.

(d) Applications

Applications for such certificates shall be in such form, be filed in such manner, and contain such information as the Secretary of Transportation may require.

(e) Suspension or revocation

Any such certificate may be suspended or revoked by the Secretary of Transportation for any cause which renders the aircraft ineligible for registration.

(f) Effect of registration

Such certificate shall be conclusive evidence of nationality for international purposes, but not in any proceeding under the laws of the United States. Registration shall not be evidence of ownership of aircraft in any proceeding in which such ownership by a particular person is, or may be, in issue.

(Pub. L. 85-726, title V, § 501, Aug. 23, 1958, 72 Stat. 771; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

EFFECTIVE DATE

Subchapter effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now the Federal Aviation Administra-

tor] first appointed under this chapter qualifies and takes office, see section 1505(2) of Pub. L. 85-726, set out as an Effective Date note under section 1301 of this title. The Administrator of the Federal Aviation Agency was appointed, qualified, and took office on Oct. 31, 1958.

TRANSFER OF FUNCTIONS

In subsecs. (a), (c), (d), and (e), "Secretary of Transportation" was substituted for "Administrator" (meaning Administrator of the Federal Aviation Agency) pursuant to Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator thereof under this section to the Secretary of Transportation. See section 1655(c)(1) of this title.

§ 1402. Registration of engines, propellers, and appliances

The Secretary of Transportation may establish reasonable rules and regulations for registration and identification of aircraft engines, propellers, and appliances, in the interest of safety, and no aircraft engine, propeller, or appliance shall be used in violation of any such rule or regulation.

(Pub. L. 85-726, title V, § 502, Aug. 23, 1958, 72 Stat. 772; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Administrator" (meaning Administrator of the Federal Aviation Agency) pursuant to Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator thereof under this section to the Secretary of Transportation. See section 1655(c)(1) of this title.

§ 1403. Recordation of aircraft ownership

(a) Establishment of recording system

The Secretary of Transportation shall establish and maintain a system for the recording of each and all of the following:

(1) Any conveyance which affects the title to, or any interest in, any civil aircraft of the United States;

(2) Any lease, and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes, which lease or other instrument affects the title to, or any interest in, any specifically identified aircraft engine or engines of seven hundred and fifty or more rated takeoff horsepower for each such engine or the equivalent of such horsepower, or any specifically identified aircraft propeller capable of absorbing seven hundred and fifty or more rated takeoff shaft horsepower, and also any assignment or amendment thereof or supplement thereto;

(3) Any lease, and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes, which lease or other instrument affects the title to, or any interest in, any aircraft engines, propellers, or appliances maintained by or on behalf of an air carrier certificated under section 1424(b) of this title for installation or use in aircraft, aircraft engines, or propellers, or any spare parts maintained by or on behalf of such an air carrier, which instrument need only describe generally by types the engines, propellers, appliances, and spare parts covered thereby and designate the location or locations thereof; and also any assignment or amendment thereof or supplement thereto.

(b) Recording of releases, cancellations, discharges, or satisfactions

The Secretary of Transportation shall also record under the system provided for in subsection (a) of this section any release, cancellation, discharge, or satisfaction relating to any conveyance or other instrument recorded under said system.

(c) Validity of conveyances or other instruments; filing

No conveyance or instrument the recording of which is provided for by subsection (a) of this section shall be valid in respect of such aircraft, aircraft engine or engines, propellers, appliances, or spare parts against any person other than the person by whom the conveyance or other instrument is made or given, his heir or devisee, or any person having actual notice thereof, until such conveyance or other instrument is filed for recordation in the office of the Secretary of Transportation: *Provided*, That previous recording of any conveyance or instrument with the Administrator of the Civil Aeronautics Administration under the provisions of the Civil Aeronautics Act of 1938 shall have the same force and effect as though recorded as provided herein; and conveyances, the recording of which is provided for by subsection (a)(1) of this section made on or before August 21, 1938, and instruments, the recording of which is provided for by subsections (a)(2) and (a)(3) of this section made on or before June 19, 1948, shall not be subject to the provisions of this subsection.

(d) Effect of recording

Each conveyance or other instrument recorded by means of or under the system provided for in subsection (a) or (b) of this section shall from the time of its filing for recordation be valid as to all persons without further or other recordation, except that an instrument recorded pursuant to subsection (a)(3) of this section shall be effective only with respect to those of such items which may from time to time be situated at the designated location or locations and only while so situated: *Provided*, That an instrument recorded under subsection (a)(2) of this section shall not be affected as to the engine or engines, or propeller or propellers, specifically identified therein, by any instrument theretofore or thereafter recorded pursuant to subsection (a)(3) of this section.

(e) Form of conveyances or other instruments

Except as the Secretary of Transportation may by regulation prescribe, no conveyance or other instrument shall be recorded unless it shall have been acknowledged before a notary public or other officer authorized by the law of the United States, or of a State, territory, or possession thereof, or the District of Columbia, to take acknowledgment of deeds.

(f) Index of conveyances and other instruments

The Secretary of Transportation shall keep a record of the time and date of the filing of conveyances and other instruments with him and

of the time and date of recordation thereof. He shall record conveyances and other instruments filed with him in the order of their reception, in files to be kept for that purpose and indexed according to—

(1) the identifying description of the aircraft, aircraft engine, or propeller, or in the case of an instrument referred to in subsection (a)(3) of this section, the location or locations specified therein, and

(2) the names of the parties to the conveyance or other instrument.

(g) Regulations

The Secretary of Transportation is authorized to provide by regulation for the endorsement upon certificates of registration, or aircraft certificates, of information with respect to the ownership of the aircraft for which each certificate is issued, the recording of discharges and satisfactions of recorded instruments, and other transactions affecting title to or interest in aircraft, aircraft engines, propellers, appliances, or parts, and for such other records, proceedings, and details as may be necessary to facilitate the determination of the rights of parties dealing with civil aircraft of the United States, aircraft engines, propellers, appliances, or parts.

(h) Previously unrecorded ownership of aircraft

The person applying for the issuance or renewal of an airworthiness certificate for an aircraft with respect to which there has been no recordation of ownership as provided in this section shall present with his application such information with respect to the ownership of the aircraft as the Secretary of Transportation shall deem necessary to show the persons who are holders of property interests in such aircraft and the nature and extent of such interests.

(Pub. L. 85-726, title V, § 503, Aug. 23, 1958, 72 Stat. 772; Pub. L. 86-81, §§ 1, 3, 4, July 8, 1959, 73 Stat. 180, 181; Pub. L. 88-346, § 2, June 30, 1964, 78 Stat. 236; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

REFERENCES IN TEXT

The Civil Aeronautics Act of 1938, referred to in subsec. (c), is act June 23, 1938, ch. 601, 52 Stat. 973, as amended, which was classified principally to chapter 9 (§ 401 et seq.) of this title and was repealed by Pub. L. 85-726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806. For complete classification of this Act to the Code, see Tables volume.

AMENDMENTS

1964—Subsec. (e). Pub. L. 88-346 inserted "Except as the Administrator may by regulation prescribe."

1959—Subsec. (a)(2). Pub. L. 86-81, § 1, substituted "takeoff" for "take-off" and provided for the central recording of interests in specifically identified aircraft propellers.

Subsec. (d). Pub. L. 86-81, § 3, included in the proviso specifically identified propellers.

Subsec. (f)(1). Pub. L. 86-81, § 4, required the indexing of conveyances of specifically identified propellers.

TRANSFER OF FUNCTIONS

In subsecs. (a), (b), (c), (e), (f), (g), and (h), "Secretary of Transportation" was substituted for "Administrator" (meaning Administrator of the Federal Aviation Agency) pursuant to Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator thereof under this section to the Secretary of Transportation. See section 1655(c)(1) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1406 of this title.

§ 1404. Limitation of security owners' liability

No person having a security interest in, or security title to, any civil aircraft, aircraft engine, or propeller under a contract of conditional sale, equipment trust, chattel or corporate mortgage, or other instrument of similar nature, and no lessor of any such aircraft, aircraft engine, or propeller under a bona fide lease of thirty days or more, shall be liable by reason of such interest or title, or by reason of his interest as lessor or owner of the aircraft, aircraft engine, or propeller so leased, for any injury to or death of persons, or damage to or loss of property, on the surface of the earth (whether on land or water) caused by such aircraft, aircraft engine, or propeller, or by the ascent, descent, or flight of such aircraft, aircraft engine, or propeller or by the dropping or falling of an object therefrom, unless such aircraft, aircraft engine, or propeller is in the actual possession or control of such person at the time of such injury, death, damage, or loss.

(Pub. L. 85-726, title V, § 504, Aug. 23, 1958, 72 Stat. 774; Pub. L. 86-81, § 2, July 8, 1959, 73 Stat. 180.)

AMENDMENTS

1959—Pub. L. 86-81 exempted security owners and lessors of both aircraft engines and propellers from liability without fault for injury or damage to persons or property on the surface of the earth which might be caused by these instruments.

§ 1405. Dealers' aircraft registration certificates

The Secretary of Transportation may, by such reasonable regulations as he may find to be in the public interest, provide for the issuance, and for the suspension or revocation, of dealers' aircraft registration certificates, and for their use in connection with aircraft eligible for registration under this chapter by persons engaged in the business of manufacturing, distributing, or selling aircraft. Aircraft owned by holders of dealers' aircraft registration certificates shall be deemed registered under this chapter to the extent that the Secretary of Transportation may, by regulation, provide. It shall be unlawful for any person to violate any regulation, or any term, condition, or limitation contained in any certificate, issued under this section.

(Pub. L. 85-726, title V, § 505, Aug. 23, 1958, 72 Stat. 774; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

REFERENCES IN TEXT

This chapter, referred to in text, read in the original "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Administrator" (meaning Administrator of the Federal Aviation Agency) pursuant to Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator thereof under this section to the Secretary of Transportation. See section 1655(c)(1) of this title.

§ 1406. Law governing validity of certain instruments

The validity of any instrument the recording of which is provided for by section 1403 of this title, shall be governed by the laws of the State, District of Columbia, or territory or possession of the United States in which such instrument is delivered, irrespective of the location or the place of delivery of the property which is the subject of such instrument. Where the place of intended delivery of such instrument is specified therein, it shall constitute presumptive evidence that such instrument was delivered at the place so specified.

(Pub. L. 85-726, title V, § 506, as added Pub. L. 88-346, § 1(a), June 30, 1964, 78 Stat. 236.)

EFFECTIVE DATE

Section 1(d) of Pub. L. 88-346 provided that: "The amendments made by this section [enacting this section] shall not be applicable with respect to any instrument delivered before the date of enactment of this Act [June 30, 1964]."

CONVENTION ON THE INTERNATIONAL RECOGNITION OF RIGHTS IN AIRCRAFT

Section 1(c) of Pub. L. 88-346 provided that: "The amendments made by this section [enacting this section] shall not take precedence over the Convention on the International Recognition of Rights in Aircraft (4 U.S.T. 1830)."

SUBCHAPTER VI—SAFETY REGULATION OF CIVIL AERONAUTICS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1355, 1471, 1472, 1481, 1655 of this title; title 7 section 136q.

§ 1421. Powers and duties of Secretary of Transportation

(a) Minimum standards; rules and regulations

The Secretary of Transportation is empowered and it shall be his duty to promote safety of flight of civil aircraft in air commerce by prescribing and revising from time to time:

(1) Such minimum standards governing the design, materials, workmanship, construction, and performance of aircraft, aircraft engines, and propellers as may be required in the interest of safety;

(2) Such minimum standards governing appliances as may be required in the interest of safety;

(3) Reasonable rules and regulations and minimum standards governing, in the interest of safety, (A) the inspection, servicing, and overhaul of aircraft, aircraft engines, propellers, and appliances; (B) the equipment and facilities for such inspection, servicing, and overhaul; and (C) in the discretion of the Secretary of Transportation, the periods for, and the manner in, which such inspection, servicing, and overhaul shall be made, including provision for examinations and reports by properly qualified private persons whose examinations or reports the Secretary of Transportation may accept in lieu of those made by its officers and employees;

(4) Reasonable rules and regulations governing the reserve supply of aircraft, aircraft engines, propellers, appliances, and aircraft fuel and oil, required in the interest of safety, including the reserve supply of aircraft fuel and oil which shall be carried in flight;

(5) Reasonable rules and regulations governing, in the interest of safety, the maximum hours or periods of service of airmen, and other employees, of air carriers; and

(6) Such reasonable rules and regulations, or minimum standards, governing other practices, methods, and procedure, as the Secretary of Transportation may find necessary to provide adequately for national security and safety in air commerce.

(b) Consideration of needs of service; classification of standards, rules, regulations, and certificates

In prescribing standards, rules, and regulations, and in issuing certificates under this subchapter, the Secretary of Transportation shall give full consideration to the duty resting upon air carriers to perform their services with the highest possible degree of safety in the public interest and to any differences between air transportation and other air commerce; and he shall make classifications of such standards, rules, regulations, and certificates appropriate to the differences between air transportation and other air commerce. The Secretary of Transportation may authorize any aircraft, aircraft engine, propeller, or appliance, for which an aircraft certificate authorizing use thereof in air transportation has been issued, to be used in other air commerce without the issuance of a further certificate. The Secretary of Transportation shall exercise and perform his powers and duties under this chapter in such manner as will best tend to reduce or eliminate the possibility of, or recurrence of, accidents in air transportation, but shall not deem himself required to give preference to either air transportation or other air commerce in the administration and enforcement of this subchapter.

(c) Exemptions

The Secretary of Transportation from time to time may grant exemptions from the requirements of any rule or regulation prescribed under this subchapter if he finds that such action would be in the public interest.

(d) Installation of emergency locator transmitters; aircraft subject to coverage

(1) Except with respect to aircraft described in paragraph (2) of this subsection, minimum standards pursuant to this section shall include a requirement that emergency locator transmitters shall be installed—

(A) on any fixed-wing, powered civil aircraft for use in air commerce the manufacture of which is completed, or which is imported into the United States, after one year following January 2, 1974; and

(B) on any fixed-wing, powered civil aircraft used in air commerce after three years and six months following such date.

(2) The provisions of this subsection shall not apply to:

(A) Turbojet-powered aircraft;

(B) Aircraft while engaged in scheduled flights by scheduled air carriers certificated by the Board;

(C) Aircraft while engaged in training operations conducted entirely within a fifty-mile radius of the airport from which such local flight operations began;

(D) Aircraft while engaged in flight operations incident to design and testing;

(E) New aircraft while engaged in flight operations incident to their manufacture, preparations, and delivery;

(F) Aircraft while engaged in flight operations incident to the aerial application of chemicals and other substances for agricultural purposes;

(G) Aircraft certificated by the Secretary of Transportation for research and development purposes;

(H) Aircraft while used for showing compliance with regulations, crew training, exhibition, air racing, or market surveys; and

(I) Aircraft equipped to carry not more than one person.

(e) Aviation fuel standards; establishment, implementation and enforcement

The Secretary of Transportation shall prescribe, and from time to time revise, regulations (1) establishing standards governing the composition or the chemical or physical properties of any aircraft fuel or fuel additive for the purpose of controlling or eliminating aircraft emissions which the Administrator of the Environmental Protection Agency (pursuant to section 1857f-9 of title 42) determines endanger the public health or welfare, and (2) providing for the implementation and enforcement of such standards.

(Pub. L. 85-726, title VI, § 601, Aug. 23, 1958, 72 Stat. 775; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937; Pub. L. 91-596, § 31, Dec. 29, 1970, 84 Stat. 1619; Pub. L. 91-604, § 11(b)(1), Dec. 31, 1970, 84 Stat. 1705; Pub. L. 93-239, § 4, Jan. 2, 1974, 87 Stat. 1048.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), read in the original "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

CODIFICATION

Subsec. (e), relating to aviation fuel standards, was originally enacted by Pub. L. 91-604 as subsec. (d) but was redesignated (e) for purposes of codification in view of the enactment of a prior subsec. (d), relating to emergency locator beacons, by Pub. L. 91-596.

AMENDMENTS

1974—Subsec. (d)(1). Pub. L. 93-239 substituted "transmitters" for "beacons" in introductory text, "powered civil aircraft" for "powered aircraft" in subpars. (A) and (B), and "three years and six months" for "three years" in subpar. (B).

Subsec. (d)(2). Pub. L. 93-239, in revising the provisions making the subsection inapplicable to certain aircraft, substituted provisions designated as subpars. (A) to (I) for prior provisions making the subsection inapplicable to "jet-powered aircraft; aircraft used in air transportation (other than air taxis and charter aircraft); military aircraft; aircraft used solely for training purposes not involving flights more than twenty miles from its base; and aircraft used for the aerial application of chemicals".

1970—Subsec. (d). Pub. L. 91-596 added subsec. (d) Subsec. (e). Pub. L. 91-604 added subsec. (e). See Codification note above.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-596 effective 120 days after Dec. 29, 1970, see section 34 of Pub. L. 91-596, set out as an Effective Date note under section 651 of Title 29, Labor.

EFFECTIVE DATE

Subchapter effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now the Federal Aviation Administrator] first appointed under this chapter qualifies and takes office, see section 1505(2) of Pub. L. 85-726, set out as a note under section 1301 of this title. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

TRANSFER OF FUNCTIONS

In provision preceding subsec. (a)(1), and subsecs. (a)(3), (6), (b), (c), (d)(2)(G), and (e), "Secretary of Transportation" was substituted for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under this subchapter to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

HAZARDOUS SUBSTANCES

Federal Hazardous Substances Act as not modifying regulations promulgated under this section, see Pub. L. 86-613, § 18, formerly § 17, July 12, 1960, 74 Stat. 380, set out as a note under section 1261 of Title 15, Commerce and Trade.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1430 of this title.

§ 1422. Airman certificates

(a) Authorization to issue

The Secretary of Transportation is empowered to issue airman certificates specifying the capacity in which the holders thereof are authorized to serve as airmen in connection with aircraft.

(b) Application; issuance or denial; petition for review; hearing; determination; issuance of certificates to aliens

Any person may file with the Secretary of Transportation an application for an airman certificate. If the Secretary of Transportation finds, after investigation, that such person possesses proper qualifications for, and is physically able to perform the duties pertaining to, the position for which the airman certificate is sought, he shall issue such certificate, containing such terms, conditions, and limitations as to duration thereof, periodic or special examinations, tests of physical fitness, and other matters as the Secretary of Transportation may determine to be necessary to assure safety in air commerce. Except in the case of persons whose certificates are, at the time of denial, under order of suspension or whose certificates have

been revoked within one year of the date of such denial, any person whose application for the issuance or renewal of an airman certificate is denied may file with the National Transportation Safety Board a petition for review of the Secretary of Transportation's action. The National Transportation Safety Board shall thereupon assign such petition for hearing at a place convenient to the applicant's place of residence or employment. In the conduct of such hearing and in determining whether the airman meets the pertinent rules, regulations, or standards, the National Transportation Safety Board shall not be bound by findings of fact of the Secretary of Transportation. At the conclusion of such hearing, the National Transportation Safety Board shall issue its decision as to whether the airman meets the pertinent rules, regulations, and standards and the Secretary of Transportation shall be bound by such decision: *Provided*, That the Secretary of Transportation may, in his discretion, prohibit or restrict the issuance of airman certificates to aliens, or may make such issuance dependent on the terms of reciprocal agreements entered into with foreign governments.

(c) Form and recording

Each certificate shall be numbered and recorded by the Secretary of Transportation; shall state the name and address of, and contain a description of, the person to whom the certificate is issued; and shall be entitled with the designation of the class covered thereby. Certificates issued to all pilots serving in scheduled air transportation shall be designated "airline transport pilot" of the proper class.

(Pub. L. 85-726, title VI, § 602, Aug. 23, 1958, 72 Stat. 776; Pub. L. 89-670, § 6(c)(1), (d), Oct. 15, 1966, 80 Stat. 937.)

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted in text for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under this subchapter to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

The functions, powers, and duties of the Civil Aeronautics Board, relating to review of a denial of an application for the issuance or renewal of an airman certificate and a hearing and determination under this section were transferred to the Secretary of Transportation by section 6(d) of Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 937 [section 1655(d) of this title] and retransferred by section 5(b)(2) and said section 6(d) of Pub. L. 89-670 [former section 1654(b)(2) and section 1655(d) of this title] to the National Transportation Safety Board within the Department of Transportation. Former section 1654 of this title was repealed by Pub. L. 93-633, title III, § 308(1), Jan. 3, 1975, 88 Stat. 2173. Pub. L. 93-633, title III, §§ 303, 304, enacted sections 1902 and 1903 of this title which established the National Transportation Safety Board as an independent Agency of the United States on or after Apr. 1, 1975, and directed the Board to review on appeal the suspension, amendment, modification, revocation, or denial of any operating certificate or license issued by the Secretary of Transportation under sections 1422, 1429, or 1431(e) of this title. Accordingly, "National Transportation Safety Board" was substituted for "Board" in subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1903 of this title.

§ 1423. Aircraft certificates

(a) Authorization to issue; application; investigation; tests; issuance of type certificate

(1) The Secretary of Transportation is empowered to issue type certificates for aircraft, aircraft engines, and propellers; to specify in regulations the appliances for which the issuance of type certificates is reasonably required in the interest of safety; and to issue such certificates for appliances so specified.

(2) Any interested person may file with the Secretary of Transportation an application for a type certificate for an aircraft, aircraft engine, propeller, or appliance specified in regulations under paragraph (1) of this subsection. Upon receipt of an application, the Secretary of Transportation shall make an investigation thereof and may hold hearings thereon. The Secretary of Transportation shall make, or require the applicant to make, such tests during manufacture and upon completion as the Secretary of Transportation deems reasonably necessary in the interest of safety, including flight tests and tests of raw materials or any part or appurtenance of such aircraft, aircraft engine, propeller, or appliance. If the Secretary of Transportation finds that such aircraft, aircraft engine, propeller, or appliance is of proper design, material, specification, construction, and performance for safe operation, and meets the minimum standards, rules, and regulations prescribed by the Secretary of Transportation, he shall issue a type certificate therefor. The Secretary of Transportation may prescribe in any such certificate the duration thereof and such other terms, conditions, and limitations as are required in the interest of safety. The Secretary of Transportation may record upon any certificate issued for aircraft, aircraft engines, or propellers, a numerical determination of all of the essential factors relative to the performance of the aircraft, aircraft engine, or propeller for which the certificate is issued.

(b) Production certificates

Upon application, and if it satisfactorily appears to the Secretary of Transportation that duplicates of any aircraft, aircraft engine, propeller, or appliance for which a type certificate has been issued will conform to such certificate, the Secretary of Transportation shall issue a production certificate authorizing the production of duplicates of such aircraft, aircraft engines, propellers, or appliances. The Secretary of Transportation shall make such inspection and may require such tests of any aircraft, aircraft engine, propeller, or appliance manufactured under a production certificate as may be necessary to assure manufacture of each unit in conformity with the type certificate or any amendment or modification thereof. The Secretary of Transportation may prescribe in any such production certificate the duration thereof and such other terms, conditions, and limitations as are required in the interest of safety.

(c) Airworthiness certificates

The registered owner of any aircraft may file with the Secretary of Transportation an application for an airworthiness certificate for such aircraft. If the Secretary of Transportation finds that the aircraft conforms to the type certificate therefor, and, after inspection, that the aircraft is in condition for safe operation, he shall issue an airworthiness certificate. The Secretary of Transportation may prescribe in such certificate the duration of such certificate, the type of service for which the aircraft may be used, and such other terms, conditions, and limitations, as are required in the interest of safety. Each such certificate shall be registered by the Secretary of Transportation and shall set forth such information as the Secretary of Transportation may deem advisable. The certificate number, or such other individual designation as may be required by the Secretary of Transportation, shall be displayed upon each aircraft in accordance with regulations prescribed by the Secretary of Transportation.

(Pub. L. 85–726, title VI, § 603, Aug. 23, 1958, 72 Stat. 776; Pub. L. 89–670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89–670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under this subchapter to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1431 of this title.

§ 1424. Air carrier operating certificates; authorization to issue; minimum safety standards; application; issuance

(a) The Secretary of Transportation is empowered to issue air carrier operating certificates and to establish minimum safety standards for the operation of the air carrier to whom any such certificate is issued.

(b) Any person desiring to operate as an air carrier may file with the Secretary of Transportation an application for an air carrier operating certificate. If the Secretary of Transportation finds, after investigation, that such person is properly and adequately equipped and able to conduct a safe operation in accordance with the requirements of this chapter and the rules, regulations, and standards prescribed thereunder, he shall issue an air carrier operating certificate to such person. Each air carrier operating certificate shall prescribe such terms, conditions, and limitations as are reasonably necessary to assure safety in air transportation, and shall specify the points to and from which, and the Federal airways over which, such person is authorized to operate as an air carrier under an air carrier operating certificate.

(Pub. L. 85–726, title VI, § 604, Aug. 23, 1958, 72 Stat. 778; Pub. L. 89–670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), read in the original, "this Act", meaning Pub. L. 85–726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89–670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under this subchapter to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1403 of this title.

§ 1425. Maintenance of equipment in air transportation; duty of carriers and airmen; inspection of aircraft and equipment

(a) It shall be the duty of each air carrier to make, or cause to be made, such inspection, maintenance, overhaul, and repair of all equipment used in air transportation as may be required by this chapter, or the orders, rules, and regulations of the Secretary of Transportation issued thereunder. And it shall be the duty of every person engaged in operating, inspecting, maintaining, or overhauling equipment to observe and comply with the requirements of this chapter relating thereto, and the orders, rules, and regulations issued thereunder.

(b) The Secretary of Transportation shall employ inspectors who shall be charged with the duty (1) of making such inspections of aircraft, aircraft engines, propellers, and appliances designed for use in air transportation, during manufacture, and while used by an air carrier in air transportation, as may be necessary to enable the Secretary of Transportation to determine that such aircraft, aircraft engines, propellers, and appliances are in safe condition and are properly maintained for operation in air transportation; and (2) of advising and cooperating with each air carrier in the inspection and maintenance thereof by the air carrier. Whenever any inspector shall, in the performance of his duty, find that any aircraft, aircraft engine, propeller, or appliance, used or intended to be used by any air carrier in air transportation, is not in condition for safe operation, he shall so notify the carrier, in such form and manner as the Secretary of Transportation may prescribe; and, for a period of five days thereafter, such aircraft, aircraft engine, propeller, or appliance shall not be used in air transportation, or in such manner as to endanger air transportation, unless found by the Secretary of Transportation or his inspector to be in condition for safe operation.

(Pub. L. 85-726, title VI, § 605, Aug. 23, 1958, 72 Stat. 778; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under this subchapter to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

§ 1426. Air navigation facility rating; issuance of certificate

The Secretary of Transportation is empowered to inspect, classify, and rate any air navigation facility available for the use of civil aircraft, as to its suitability for such use. The Secretary of Transportation is empowered to issue a certificate for any such air navigation facility.

(Pub. L. 85-726, title VI, § 606, Aug. 23, 1958, 72 Stat. 779; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under this subchapter to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

§ 1427. Air agency rating; issuance of certificate

The Secretary of Transportation is empowered to provide for the examination and rating of (1) civilian schools giving instruction in flying or in the repair, alteration, maintenance, and overhaul of aircraft, aircraft engines, propellers, and appliances, as to the adequacy of the course of instruction, the suitability and air worthiness of the equipment, and the competency of the instructors; (2) repair stations or shops for the repair, alteration, maintenance, and overhaul of aircraft, aircraft engines, propellers, or appliances, as to the adequacy and suitability of the equipment, facilities, and materials for, and methods of, repair, alteration, maintenance, and overhaul of aircraft, aircraft engines, propellers, and appliances, and the competency of those engaged in the work or giving any instruction therein; and (3) such other air agencies as may, in his opinion, be necessary in the interest of the public. The Secretary of Transportation is empowered to issue certificates for such schools, repair stations, and other agencies.

(Pub. L. 85-726, title VI, § 607, Aug. 23, 1958, 72 Stat. 779; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under this subchapter to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

§ 1428. Form of applications for certificates

Applications for certificates under this subchapter shall be in such form, contain such information, and be filed and served in such manner as the Secretary of Transportation may prescribe, and shall be under oath whenever the Secretary of Transportation so requires.

(Pub. L. 85-726, title VI, § 608, Aug. 23, 1958, 72 Stat. 779; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under this subchapter to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

§ 1429. Reinspection or reexamination; amendment, suspension, or revocation of certification

(a) Procedure; notification; hearing; appeal to National Transportation Safety Board; judicial review

The Secretary of Transportation may, from time to time, reinspect any civil aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency, or may reexamine any civil airman. If, as a result of any such reinspection or reexamination, or if, as a result of any other investigation made by the Secretary of Transportation, he determines that safety in air commerce or air transportation and the public interest requires, the Secretary of Transportation may issue an order amending, modifying, suspending, or revoking, in whole or in part, any type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate (including airport operating certificate), or air agency certificate. Prior to amending, modifying, suspending, or revoking any of the foregoing certificates, the Secretary of Transportation shall advise the

holder thereof as to any charges or other reasons relied upon by the Secretary of Transportation for his proposed action and, except in cases of emergency, shall provide the holder of such a certificate an opportunity to answer any charges and be heard as to why such certificate should not be amended, modified, suspended, or revoked. Any person whose certificate is affected by such an order of the Secretary of Transportation under this section may appeal the Secretary of Transportation's order to the National Transportation Safety Board and the National Transportation Safety Board may, after notice and hearing, amend, modify, or reverse the Secretary of Transportation's order if it finds that safety in air commerce or air transportation and the public interest do not require affirmation of the Secretary of Transportation's order. In the conduct of its hearings the National Transportation Safety Board shall not be bound by findings of fact of the Secretary of Transportation. The filing of an appeal with the National Transportation Safety Board shall stay the effectiveness of the Secretary of Transportation's order unless the Secretary of Transportation advises the National Transportation Safety Board that an emergency exists and safety in air commerce or air transportation requires the immediate effectiveness of his order, in which event the order shall remain effective and the National Transportation Safety Board shall finally dispose of the appeal within sixty days after being so advised by the Secretary of Transportation. The person substantially affected by the National Transportation Safety Board's order may obtain judicial review of said order under the provisions of section 1486 of this title, and the Secretary of Transportation shall be made a party to such proceedings.

(b) Violation of certain laws

The Secretary of Transportation, in his discretion, may issue an order amending, modifying, suspending, or revoking any airman certificate upon conviction of the holder of such certificate of any violation of subsection (a) of section 742j-1 of title 16, regarding the use or operation of an aircraft.

(Pub. L. 85-726, title VI, § 609, Aug. 23, 1958, 72 Stat. 779; Pub. L. 89-670, § 6(c)(1), (d), Oct. 15, 1966, 80 Stat. 937; Pub. L. 92-159, § 2(a), Nov. 18, 1971, 85 Stat. 481; Pub. L. 92-174, § 6, Nov. 27, 1971, 85 Stat. 492.)

AMENDMENTS

1971—Subsec. (a). Pub. L. 92-174 inserted "(including airport operating certificate)" immediately after "air navigation facility certificate".

Pub. L. 92-159 designated existing provisions as subsec. (a) and added subsec. (b).

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under this subchapter to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

The functions, powers, and duties of the Civil Aeronautics Board, relating to review of an order amending, modifying, suspending, or revoking in whole or in part any type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate, or air agency certificate and a hearing and determination under this section were transferred to the Secretary of Transportation by section 6(d) of Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 937 [section 1655(d) of this title] and retransferred by section 5(b)(2) and said section 6(d) of Pub. L. 89-670 [former section 1654(b)(2) and section 1655(d) of this title] to the National Transportation Safety Board within the Department of Transportation. Former section 1654 of this title was repealed by Pub. L. 93-633, title III, § 308(1), Jan. 3, 1975, 88 Stat. 2173. Pub. L. 93-633, title III, §§ 303, 304, enacted sections 1902 and 1903 of this title which established the National Transportation Safety Board as an independent Agency of the United States on or after Apr. 1, 1975, and directed the Board to review on appeal the suspension, amendment, modification, revocation, or denial of any operating certificate or license issued by the Secretary of Transportation under sections 1422, 1429, or 1431(e) of this title. Accordingly, "National Transportation Safety Board" was substituted for "Board" in subsec. (a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1431, 1903 of this title.

§ 1430. Violations; exemption of foreign aircraft and airmen

(a) It shall be unlawful—

(1) For any person to operate in air commerce any civil aircraft for which there is not currently in effect an airworthiness certificate, or in violation of the terms of any such certificate;

(2) For any person to serve in any capacity as an airman in connection with any civil aircraft, aircraft engine, propeller or appliance used or intended for use, in air commerce without an airman certificate authorizing him to serve in such capacity, or in violation of any term, condition, or limitation thereof, or in violation of any order, rule, or regulation issued under this subchapter;

(3) For any person to employ for service in connection with any civil aircraft used in air commerce an airman who does not have an airman certificate authorizing him to serve in the capacity for which he is employed;

(4) For any person to operate as an air carrier without an air carrier operating certificate, or in violation of the terms of any such certificate;

(5) For any person to operate aircraft in air commerce in violation of any other rule, regulation, or certificate of the Secretary of Transportation under this subchapter; and

(6) For any person to operate a seaplane or other aircraft of United States registry upon the high seas in contravention of the regulations proclaimed by the President pursuant to section 143 of title 33;

(7) For any person holding an air agency or production certificate, to violate any term, condition, or limitation thereof, or to violate any order, rule, or regulation under this subchapter relating to the holder of such certificate;

(8) For any person to operate an airport serving air carriers certificated by the Civil Aeronautics Board without an airport operating certificate, or in violation of the terms of any such certificate;

(9) For any person to manufacture, deliver, sell, or offer for sale, any aviation fuel or fuel additive in violation of any regulation prescribed under section 1421(d) of this title.

(b) Foreign aircraft and airmen serving in connection therewith may, except with respect to the observance by such airmen of the air traffic rules, be exempted from the provisions of subsection (a) of this section, to the extent, and upon such terms and conditions, as may be prescribed by the Secretary of Transportation as being in the interest of the public.

(Pub. L. 85-726, title VI, § 610, Aug. 23, 1958, 72 Stat. 780; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937; Pub. L. 91-258, title I, § 51(b)(3), May 21, 1970, 84 Stat. 235; Pub. L. 91-604, § 11(b)(2), Dec. 31, 1970, 84 Stat. 1705.)

REFERENCES IN TEXT

Section 143 of title 33, referred to in subsec. (a)(6), was repealed by Pub. L. 88-131, § 3, Sept. 24, 1963, 77 Stat. 194. See section 1051 of Title 33, Navigation and Navigable Waters.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-604 added par. (9). Pub. L. 91-258 added par. (8).

EFFECTIVE DATE OF 1970 AMENDMENT

Section 51(b)(4) of Pub. L. 91-258, as amended by Pub. L. 92-174, § 5(a), Nov. 27, 1971, 85 Stat. 492, provided that: "The amendments made by paragraph (3) of this subsection [enacting subsec. (a)(8) of this section] shall take effect upon the expiration of the three-year period beginning on the date of their enactment [May 21, 1970]."

TRANSFER OF FUNCTIONS

In subsecs. (a)(5) and (b), "Secretary of Transportation" was substituted for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under this subchapter to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

§ 1431. Control and abatement of aircraft noise and sonic boom

(a) Definitions

For purposes of this section:

(1) The term "FAA" means Administrator of the Federal Aviation Administration.

(2) The term "EPA" means the Administrator of the Environmental Protection Agency.

(b) Consultations; standards; rules and regulations; aircraft certificates

(1) In order to afford present and future relief and protection to the public health and welfare from aircraft noise and sonic boom, the FAA, after consultation with the Secretary of Transportation and with EPA, shall prescribe and amend standards for the measurement of aircraft noise and sonic boom and shall prescribe and amend such regulations as the FAA may find necessary to provide for the control and abatement of aircraft noise and sonic boom, including the application of such standards and regulations in the issuance, amendment, modification, suspension, or revocation of any certificate authorized by this subchapter. No exemption with respect to any standard or regulation under this section may be granted under any provision of this chapter unless the FAA shall have consulted with EPA before such exemption is granted, except that if the FAA determines that safety in air commerce or air transportation requires that such an exemption be granted before EPA can be consulted, the FAA shall consult with EPA as soon as practicable after the exemption is granted.

(2) The FAA shall not issue an original type certificate under section 1423(a) of this title for any aircraft for which substantial noise abatement can be achieved by prescribing standards and regulations in accordance with this section, unless he shall have prescribed standards and regulations in accordance with this section which apply to such aircraft and which protect the public from aircraft noise and sonic boom, consistent with the considerations listed in subsection (d) of this section.

(c) Submission of proposed regulations to FAA by EPA; publication; hearing; review of prescribed regulations; report and supplemental report

(1) Not earlier than the date of submission of the report required by section 4906 of title 42, EPA shall submit to the FAA proposed regulations to provide such control and abatement of aircraft noise and sonic boom (including control and abatement through the exercise of any of the FAA's regulatory authority over air commerce or transportation or over aircraft or airport operations) as EPA determines is necessary to protect the public health and welfare. The FAA shall consider such proposed regulations submitted by EPA under this paragraph and shall, within thirty days of the date of its submission to the FAA, publish the proposed regulations in a notice of proposed rulemaking. Within sixty days after such publication, the FAA shall commence a hearing at which interested persons shall be afforded an opportunity for oral (as well as written) presentations of data, views, and arguments. Within a reasonable time after the conclusion of such hearing and after consultation with EPA, the FAA shall—

(A) in accordance with subsection (b) of this section, prescribe regulations (i) substantially as they were submitted by EPA, or (ii) which are a modification of the proposed regulations submitted by EPA, or

(B) publish in the Federal Register a notice that it is not prescribing any regulation in response to EPA's submission of proposed regulations, together with a detailed explanation providing reasons for the decision not to prescribe such regulations.

(2) If EPA has reason to believe that the FAA's action with respect to a regulation proposed by EPA under paragraph (1)(A)(ii) or (1)(B) of this subsection does not protect the public health and welfare from aircraft noise or sonic boom, consistent with the considerations

listed in subsection (d) of this section, EPA shall consult with the FAA and may request the FAA to review, and report to EPA on, the advisability of prescribing the regulation originally proposed by EPA. Any such request shall be published in the Federal Register and shall include a detailed statement of the information on which it is based. The FAA shall complete the review requested and shall report to EPA within such time as EPA specifies in the request, but such time specified may not be less than ninety days from the date the request was made. The FAA's report shall be accompanied by a detailed statement of the FAA's findings and the reasons for the FAA's conclusions; shall identify any statement filed pursuant to section 4332(2)(C) of title 42 with respect to such action of the FAA under paragraph (1) of this subsection; and shall specify whether (and where) such statements are available for public inspection. The FAA's report shall be published in the Federal Register, except in a case in which EPA's request proposed specific action to be taken by the FAA, and the FAA's report indicates such action will be taken.

(3) If, in the case of a matter described in paragraph (2) of this subsection with respect to which no statement is required to be filed under such section 4332(2)(C) of title 42, the report of the FAA indicates that the proposed regulation originally submitted by EPA should not be made, then EPA may request the FAA to file a supplemental report, which shall be published in the Federal Register within such a period as EPA may specify (but such time specified shall not be less than ninety days from the date the request was made), and which shall contain a comparison of (A) the environmental effects (including those which cannot be avoided) of the action actually taken by the FAA in response to EPA's proposed regulations, and (B) EPA's proposed regulations.

(d) Considerations determinative of standards, rules, and regulations

In prescribing and amending standards and regulations under this section, the FAA shall—

(1) consider relevant available data relating to aircraft noise and sonic boom, including the results of research, development, testing, and evaluation activities conducted pursuant to this chapter and the Department of Transportation Act [49 U.S.C. 1651 et seq.];

(2) consult with such Federal, State, and interstate agencies as he deems appropriate;

(3) consider whether any proposed standard or regulation is consistent with the highest degree of safety in air commerce or air transportation in the public interest;

(4) consider whether any proposed standard or regulation is economically reasonable, technologically practicable, and appropriate for the particular type of aircraft, aircraft engine, appliance, or certificate to which it will apply; and

(5) consider the extent to which such standard or regulation will contribute to carrying out the purposes of this section.

(e) Amendment, modification, suspension, or revocation of certificate; notice and appeal rights

In any action to amend, modify, suspend, or revoke a certificate in which violation of aircraft noise or sonic boom standards or regulations is at issue, the certificate holder shall have the same notice and appeal rights as are contained in section 1429 of this title, and in any appeal to the National Transportation Safety Board, the Board may amend, modify, or reverse the order of the FAA if it finds that control or abatement of aircraft noise or sonic boom and the public health and welfare do not require the affirmation of such order, or that such order is not consistent with safety in air commerce or air transportation.

(Pub. L. 85-726, title IV, § 611, as added Pub. L. 90-411, § 1, July 21, 1968, 82 Stat. 395, and amended Pub. L. 92-574, § 7(b), Oct. 27, 1972, 86 Stat. 1239.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(1), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

The Department of Transportation Act, referred to in subsec. (d)(1), is Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, as amended, which is classified principally to chapter 23 (§ 1651 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1651 of this title and Tables volume.

AMENDMENTS

1972—Subsec. (a). Pub. L. 92-574 added subsec. (a). Former subsec. (a) redesignated (b)(1).

Subsec. (b)(1). Pub. L. 92-574 redesignated former subsec. (a) as subsec. (b)(1) and in subsec. (b)(1) as so redesignated added requirement that the Administrator of the Federal Aviation Administration consult with the Administrator of the Environmental Protection Agency before prescribing and amending standards and added provisions for consultation in connection with the grant of exemptions with respect to standards and regulations under this section. Former subsec. (b) redesignated (d).

Subsec. (b)(2). Pub. L. 92-574 added subsec. (b)(2). Former subsec. (b) redesignated (d).

Subsec. (c). Pub. L. 92-574 added subsec. (c). Former subsec. (c) redesignated (e).

Subsec. (d). Pub. L. 92-574 redesignated former subsec. (b) as (d).

Subsec. (e). Pub. L. 92-574 redesignated former subsec. (c) as (e).

SAVINGS PROVISIONS

Section 7(c) of Pub. L. 92-574 provided that:

"All—

"(1) standards, rules, and regulations prescribed under section 611 of the Federal Aviation Act of 1958 [this section], and

"(2) exemptions, granted under any provision of the Federal Aviation Act of 1958 [this chapter], with respect to such standards, rules, and regulations,

which are in effect on the date of the enactment of this Act [Oct. 27, 1972], shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Administrator of the Federal Aviation Administration in the exercise of any authority vested in him, by a court of competent jurisdiction, or by operation of law."

NATIONAL TRANSPORTATION SAFETY BOARD

The National Transportation Safety Board originally established within the Department of Transportation was constituted an independent agency of the United States on and after April 1, 1975, see section 1902 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1903 of this title; title 42 sections 4903, 4911, 4915.

§ 1432. Airport operating certificates

(a) Power to issue

The Administrator is empowered to issue airport operating certificates to airports serving air carriers certificated by the Civil Aeronautics Board and to establish minimum safety standards for the operation of such airports.

(b) Issuance; terms and conditions

Any person desiring to operate an airport serving air carriers certificated by the Civil Aeronautics Board may file with the Administrator an application for an airport operating certificate. If the Administrator finds, after investigation, that such person is properly and adequately equipped and able to conduct a safe operation in accordance with the requirements of this chapter and the rules, regulations, and standards prescribed thereunder, he shall issue an airport operating certificate to such person. Each airport operating certificate shall prescribe such terms, conditions, and limitations as are reasonably necessary to assure safety in air transportation. Unless the Administrator determines that it would be contrary to the public interest, such terms, conditions, and limitations shall include but not be limited to terms, conditions, and limitations relating to the operation and maintenance of adequate safety equipment, including firefighting and rescue equipment capable of rapid access to any portion of the airport used for the landing, takeoff, or surface maneuvering of aircraft.

(c) Exemption from requirements relating to firefighting and rescue equipment

The Administrator may exempt any operator of an air carrier airport enplaning annually less than one-quarter of 1 percent of the total number of passengers enplaned at all air carrier airports from the requirements imposed by subsection (b) of this section relating to firefighting and rescue equipment if he finds that such requirements are, or would be, unreasonably costly, burdensome, or impractical.

(Pub. L. 85-726, title VI, § 612, as added Pub. L. 91-258, title I, § 51(b)(1), May 21, 1970, 84 Stat. 234, and amended Pub. L. 92-174, § 5(b), Nov. 27, 1971, 85 Stat. 492; Pub. L. 94-353, title I, § 19(a), July 12, 1976, 90 Stat. 883.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), read in the original "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

AMENDMENTS

1976—Subsec. (c). Pub. L. 94-353 added subsec. (c).

1971—Subsec. (b). Pub. L. 92-174 struck out requirement that airport operating certificates prescribe the terms, conditions, and limitations relating to the installation, operation, and maintenance of adequate air navigation facilities and removed the requirement that each airport operating certificate prescribe terms, conditions, and limitations relating to the operation and maintenance of adequate safety equipment in cases where the Administrator determines that it would be contrary to the public interest to so require such terms, conditions, and limitations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1711, 1720 of this title.

SUBCHAPTER VII—AIRCRAFT ACCIDENT INVESTIGATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1323, 1352, 1471, 1472, 1655, 1903 of this title.

§ 1441. Accidents involving civil aircraft

(a) General duties of National Transportation Safety Board

It shall be the duty of the National Transportation Safety Board to—

(1) Make rules and regulations governing notification and report of accidents involving civil aircraft;

(2) Investigate such accidents and report the facts, conditions, and circumstances relating to each accident and the probable cause thereof;

(3) Make such recommendations to the Secretary of Transportation as, in its opinion, will tend to prevent similar accidents in the future;

(4) Make such reports public in such form and manner as may be deemed by it to be in the public interest; and

(5) Ascertain what will best tend to reduce or eliminate the possibility of, or recurrence of, accidents by conducting special studies and investigations on matters pertaining to safety in air navigation and the prevention of accidents.

(b) Employment of temporary personnel

The National Transportation Safety Board may, without regard to the civil-service laws, engage, for temporary service in the investigation of any accident involving aircraft, persons other than officer or employees of the United States and may fix their compensation without regard to chapter 51 and subchapter III of chapter 53 of title 5; and may, with consent of the head of the executive department or independent establishment under whose jurisdiction the officer or employee is serving, secure for such service any officer or employee of the United States.

(c) Conduct of investigations; examinations and tests; autopsies and protection of religious beliefs

In conducting any hearing or investigation, any member of the National Transportation Safety Board or any officer or employee of the National Transportation Safety Board or any person engaged or secured under subsection (b) of this section shall have the same powers as the National Transportation Safety Board has with respect to hearings or investigations conducted by it. In carrying out its duties under this subchapter, the National Transportation Safety Board is authorized to examine and test to the extent necessary any civil aircraft, aircraft engine, propeller, appliance, or property aboard an aircraft involved in an accident in air commerce. In the case of any fatal accident, the National Transportation Safety Board is authorized to examine the remains of any de-

ceased person aboard the aircraft at the time of the accident, who dies as a result of the accident, and to conduct autopsies or such other tests thereof as may be necessary to the investigation of the accident: *Provided*, That to the extent consistent with the needs of the accident investigation, provisions of local law protecting religious beliefs with respect to autopsies shall be observed.

(d) Preservation of aircraft, engines, propellers, appliances or property aboard aircraft involved in accidents

Any civil aircraft, aircraft engine, propeller, appliance, or property aboard an aircraft involved in an accident in air commerce, shall be preserved in accordance with, and shall not be moved except in accordance with, regulations prescribed by the National Transportation Safety Board.

(e) Use of records and reports as evidence

No part of any report or reports of the National Transportation Safety Board relating to any accident or the investigation thereof, shall be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such report or reports.

(f) Investigations by Secretary of Transportation; report

Upon the request of the National Transportation Safety Board, the Secretary of Transportation is authorized to make investigations with regard to aircraft accidents and to report to the National Transportation Safety Board the facts, conditions, and circumstances thereof, and the National Transportation Safety Board is authorized to utilize such reports in making its determinations of probable cause under this subchapter.

(g) Participation by Secretary of Transportation in investigations

In order to assure the proper discharge by the Secretary of Transportation of his duties and responsibilities, the National Transportation Safety Board shall provide for the appropriate participation of the Secretary of Transportation and his reresentatives in any investigations conducted by the National Transportation Safety Board under this subchapter: *Provided*, That the Secretary of Transportation or his representatives shall not participate in the determination of probable cause by the National Transportation Safety Board under this subchapter.

(Pub. L. 85-726, title VII, § 701, Aug. 23, 1958, 72 Stat. 781; Pub. L. 87-810, §§ 1, 2, Oct. 15, 1962, 76 Stat. 921; Pub. L. 89-670, § 6(c)(1), (d), Oct. 15, 1966, 80 Stat. 937.)

REFERENCES IN TEXT

The civil-service laws, referred to in subsec. (b), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

CODIFICATION

In subsec. (b), "chapter 51 and subchapter III of chapter 53 of title 5" was substituted for "the Classification Act of 1949, as amended" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1962—Subsec. (c). Pub. L. 87-810, § 1, provided for examinations and tests, including autopsies subject to protection of religious beliefs by local law.

Subsec. (d). Pub. L. 87-810, § 2, provided for preservation of property aboard aircraft.

EFFECTIVE DATE

Subchapter effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now the Federal Aviation Administration] first appointed under this chapter qualifies and takes office, see section 1505(2) of Pub. L. 85-726, set out as a note under section 1301 of this title. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

TRANSFER OF FUNCTIONS

The functions, powers, and duties of the Civil Aeronautics Board, relating to aircraft accident investigation under this section were transferred to the Secretary of Transportation by section 6(d) of Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 937 [section 1655(d) of this title] and retransferred by section 5(c) and said section 6(d) of Pub. L. 89-670 [former section 1654(c) and section 1655(d) of this title] to the National Transportation Safety Board within the Department of Transportation. Section 1654 of this title was repealed by Pub. L. 93-633, title III, § 308(1), Jan. 3, 1975, 88 Stat. 2173. Pub. L. 93-633, title III, §§ 303, 304, enacted sections 1902 and 1903 of this title which established the National Transportation Safety Board as an independent Agency of the United States on or after Apr. 1, 1975, and directed the Board investigate or cause to be investigated and determine the facts, conditions, and circumstances and the cause or probable causes of any aircraft accident which was within the scope of the functions, powers, and duties transferred from the Civil Aeronautics Board by section 6(d) of Pub. L. 89-670 [section 1655(d) of this title pursuant to title VII of the Federal Aviation Act of 1958, as amended this subchapter], and report in writing on the facts, conditions, and circumstances of each accident reported. Accordingly, "National Transportation Safety Board" was substituted for "Board".

In subsecs. (a)(3), (f), and (g), "Secretary of Transportation" was substituted for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under this subchapter to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1654 of this title.

§ 1442. Accidents involving military aircraft

(a) Participation in investigations by military authorities

In the case of accidents involving both civil and military aircraft, the National Transportation Safety Board shall provide for participation in the investigation by appropriate military authorities.

(b) Participation in investigations by Secretary of Transportation

In the case of accidents involving solely military aircraft and in which a function of the Secretary of Transportation is or may be involved, the military authorities shall provide

for participation in the investigation by the Secretary of Transportation.

(c) Furnishing information to Secretary of Transportation and National Transportation Safety Board

With respect to other accidents involving solely military aircraft, the military authorities shall provide the Secretary of Transportation and the National Transportation Safety Board with any information with respect thereto which, in the judgment of the military authorities, would contribute to the promotion of air safety.

(Pub. L. 85–726, title VII, § 702, Aug. 23, 1958, 72 Stat. 782; Pub. L. 89–670, § 6(c)(1), (d), Oct. 15, 1966, 80 Stat. 937.)

TRANSFER OF FUNCTIONS

The functions, powers, and duties of the Civil Aeronautics Board, relating to aircraft accident investigation under this section were transferred to the Secretary of Transportation by section 6(d) of Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 937 [section 1655(d) of this title] and retransferred by section 5(c) and said section 6(d) of Pub. L. 89–670 [former section 1654(c) and section 1655(d) of this title] to the National Transportation Safety Board within the Department of Transportation. Section 1654 of this title was repealed by Pub. L. 93–633, title III, § 308(1), Jan. 3, 1975, 88 Stat. 2173. Pub. L. 93–633, title III, §§ 303, 304, enacted sections 1902 and 1903 of this title which established the National Transportation Safety Board as an independent Agency of the United States on or after Apr. 1, 1975, and directed the Board investigate or cause to be investigated and determine the facts, conditions, and circumstances and the cause or probable causes of any aircraft accident which was within the scope of the functions, powers, and duties transferred from the Civil Aeronautics Board by section 6(d) of Pub. L. 89–670 [section 1655(d) of this title pursuant to title VII of the Federal Aviation Act of 1958, as amended this subchapter], and report in writing on the facts, conditions, and circumstances of each accident reported. Accordingly, "National Transportation Safety Board" was substituted for "Board".

In subsecs. (b) and (c), "Secretary of Transportation" was substituted for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89–670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under this subchapter to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

§ 1443. Special Boards of Inquiry

(a) Establishment; composition

In any accident which involves substantial questions of public safety in air transportation the National Transportation Safety Board may establish a Special Board of Inquiry consisting of three members; one member of the National Transportation Safety Board who shall act as Chairman of the Special Board of Inquiry; and two members representing the public who shall be appointed by the President upon notification of the creation of such Special Board of Inquiry by the National Transportation Safety Board.

(b) Qualifications of public members

Such public members of the Special Board of Inquiry shall be duly qualified by training and experience to participate in such inquiry and shall have no pecuniary interest in any aviation enterprise involved in the accident to be investigated.

(c) Authority of Boards

The Special Board of Inquiry when convened to investigate an accident certified to it by the National Transportation Safety Board shall have all authority of the National Transportation Safety Board as described in this subchapter.

(Pub. L. 85–726, title VII, § 703, Aug. 23, 1958, 72 Stat. 782; Pub. L. 89–670, § 6(d), Oct. 15, 1966, 80 Stat. 938.)

TRANSFER OF FUNCTIONS

The functions, powers, and duties of the Civil Aeronautics Board, relating to aircraft accident investigation under this section were transferred to the Secretary of Transportation by section 6(d) of Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 937 [section 1655(d) of this title] and retransferred by section 5(c) and said section 6(d) of Pub. L. 89–670 [former section 1654(c) and section 1655(d) of this title] to the National Transportation Safety Board within the Department of Transportation. Section 1654 of this title was repealed by Pub. L. 93–633, title III, § 308(1), Jan. 3, 1975, 88 Stat. 2173. Pub. L. 93–633, title III, §§ 303, 304, enacted sections 1902 and 1903 of this title which established the National Transportation Safety Board as an independent Agency of the United States on or after Apr. 1, 1975, and directed the Board investigate or cause to be investigated and determine the facts, conditions, and circumstances and the cause or probable causes of any aircraft accident which was within the scope of the functions, powers, and duties transferred from the Civil Aeronautics Board by section 6(d) of Pub. L. 89–670 [section 1655(d) of this title pursuant to title VII of the Federal Aviation Act of 1958, as amended this subchapter], and report in writing on the facts, conditions, and circumstances of each accident reported. Accordingly, "National Transportation Safety Board" was substituted for "Board".

SUBCHAPTER VIII—OTHER ADMINISTRATIVE AGENCIES

§ 1461. The President of the United States; suspension and rejection of rates in foreign air transportation

(a) The issuance, denial, transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions, and limitations contained in, any certificate authorizing an air carrier to engage in overseas or foreign air transportation, or air transportation between places in the same Territory or possession, or any permit issuable to any foreign air carrier under section 1372 of this title, shall be subject to the approval of the President. Copies of all applications in respect of such certificates and permits shall be transmitted to the President by the Board before hearing thereon, and all decisions thereon by the Board shall be submitted to the President before publication thereof.

(b) Any order of the Board pursuant to section 1482(j) of this title suspending, rejecting, or canceling a rate, fare, or charge for foreign transportation, and any order rescinding the effectiveness of any such order, shall be submitted to the President before publication thereof. The President may disapprove any such order when he finds that disapproval is required for reasons of the national defense or the foreign policy of the United States not later than ten

days following submission by the Board of any such order to the President.

(Pub. L. 85-726, title VIII, § 801, Aug. 23, 1958, 72 Stat. 782; Pub. L. 92-259, § 2, Mar. 22, 1972, 86 Stat. 96.)

AMENDMENTS

1972—Pub. L. 92-259 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE

Subchapter effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now the Federal Aviation Administration] first appointed under this chapter qualifies and takes office, see section 1505(2) of Pub. L. 85-726, set out as a note under section 1301 of this title. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

INTERNATIONAL AGREEMENTS

Subsec. (b) of this section not to be deemed to authorize any actions inconsistent with the provisions of section 1502 of this title, see section 4 of Pub. L. 92-259, set out as a note under section 1482 of this title.

EX. ORD. NO. 11920. ESTABLISHMENT OF EXECUTIVE BRANCH PROCEDURES TO FACILITATE REVIEW OF SUBMITTED DECISIONS

Ex. Ord. No. 11920, June 10, 1976, 41 F.R. 23665, provided:

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 801 of the Federal Aviation Act, as amended (49 U.S.C. 1461), and as President of the United States of America, solely to provide Presidential guidance to department and agency heads and in order to facilitate Presidential review of decisions submitted to the President for his approval by the Civil Aeronautics Board pursuant to section 801 of the Federal Aviation Act, as amended, [this section], it is hereby ordered as follows:

Section 1. (a) Except as provided in this section, decisions of the Civil Aeronautics Board, hereinafter referred to as the CAB, transmitted to the President pursuant to section 801 of the Federal Aviation Act, as amended [this section], hereinafter referred to as section 801, may be made available by the CAB for public inspection and copying following submission to the President.

(b) In the interests of national security, and in order to allow for consideration of appropriate action under Executive Order No. 11652, as amended [set out under section 401 of Title 50, War and National Defense], decisions of the CAB transmitted to the President under section 801 shall be withheld from public disclosure for five days after submission to the President.

(c) At the same time that decisions of the CAB are submitted to the President pursuant to section 801, [this section], the CAB shall transmit copies thereof to the Secretary of State, the Secretary of Defense, and the Assistant to the President for National Security Affairs.

(d) The Secretary of State and the Secretary of Defense, or their designees, shall review the decisions of the CAB transmitted pursuant to subsection (c) above, and shall promptly advise the Assistant to the President for National Security Affairs or his designee, whether, and if so, why, action pursuant to Executive Order No. 11652, as amended [set out under section 401 of Title 501, is deemed appropriate. If, after considering the above recommendations, the Assistant to the President for National Security Affairs or his designee determines that classification under Executive Order No. 11652 is appropriate, he shall take such action and immediately so inform the CAB. Action pursuant to this subsection shall be completed within five days of receipt of the decision by the President.

(e) On and after the sixth day following receipt by the President of a CAB decision submitted pursuant to section 801 [this section], the CAB is authorized to disclose all unclassified portions of the text of such decision. Nothing in this section is intended to affect the ability to withhold material under Executive order or statute other than section 801.

Sec. 2. (a) Views of departments and agencies outside of the Executive Office of the President, other than those views involving considerations of defense or foreign policy (including international negotiations costs) which are to be the subject of recommendations to the President in connection with his review under section 801 [this section], shall be presented to the CAB in accordance with the procedures of the CAB. While some issues will inevitably involve both questions of regulatory policy and defense or foreign policy, departments and agencies outside of the Executive Office of the President should make a conscientious effort to present their views on regulatory matters in proceedings before the CAB, and raise only matters of defense or foreign policy that are of Presidential concern in the course of the review under section 801.

(b) Departments and agencies outside of the Executive Office of the President which intend to make recommendations to the President on matters of defense or foreign policy and have such intentions while the matter is pending before the CAB, shall, except as confidentiality is required for reasons of defense or foriegn policy, make the existence of such intentions and the conclusions to be recommended known to the CAB in the course of its proceedings.

Sec. 3. (a) In advising the President with respect to his review of an order submitted to him pursuant to section 801 [this section], departments and agencies outside of the Executive Office of the President shall:

(1) identify any matter contained in their respective recommendations which was not previously submitted to the CAB pursuant to section 2(a) above;

(2) explain why such matter was not previously submitted to the CAB for its consideration; and

(3) identify with particularity the defense or foreign policy implications of the CAB decision which are deemed appropriate for the President's consideration.

(b) Orders involving foreign and overseas air transportation certificates of U.S. carriers that are subject to the approval of the President are not subject to judicial review when the President approves or disapproves an order for reasons of defense or foreign policy. All disapprovals necessarily are based on such a Presidential decision, but approval by the President does not necessarily imply the existence of any defense or foreign policy reason. For the purpose of assuring whatever opportunity is available under the law for judicial review of the CAB decisions, all departments and agencies which make recommendations to the President pursuant to section 801 [this section] should indicate separately whether, and why, if the order or any portion of the order is approved, the President cannot state in his approval that no defense or foreign policy reason underlies his action.

Sec. 4. Individuals within the Executive Office of the President shall follow a policy of (a) refusing to discuss matters relating to the disposition of a case subject to the approval of the President under section 801 [this section] with any interested private party, or an attorney or agent for any such party, prior to the President's decision, and (b) referring any written communication from an interested private party, or an attorney or agent for any such party, to the appropriate department or agency outside of the Executive Office of the President. Exceptions to this policy may only be made when the head of an appropriate department or agency outside of the Executive Office of the President personally finds that direct written or oral communication between a private party and a person within the Executive Office of the President is needed for reasons of defense or foreign policy.

Sec. 5. Departments and agencies outside of the Executive Office of the President which regularly make recommendations to the President in connection with the Presidential review pursuant to section 801 [this section] shall, consistent with applicable law, includ-

ing the provisions of Chapter 5 of Title 5 of the United States Code:

(a) establish public dockets for all written communications (other than those requiring confidential treatment for defense or foreign policy reasons) between their officers and employees and private parties in connection with the preparation of such recommendations; and

(b) prescribe such other procedures governing oral and written communications as they deem appropriate.

Sec. 6. Although it is recognized that the provisions set forth in this Order will frequently apply to review of decisions made in adversary proceedings involving private parties, this Order is intended solely for the internal guidance of the departments and agencies in order to facilitate the Presidential review process. This Order does not confer rights on any private parties.

Sec. 7. The provisions of this Order shall be effective on the 30th day following publication in the FEDERAL REGISTER.

GERALD R. FORD.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1486 of this title.

§ 1462. The Department of State

The Secretary of State shall advise the Secretary of Transportation, the Board, and the Secretary of Commerce, and consult with the Secretary of Transportation, Board, or Secretary of Commerce, as appropriate, concerning the negotiations of any agreement with foreign governments for the establishment or development of air navigation, including air routes and services.

(Pub. L. 85-726, title VIII, § 802, Aug. 23, 1958, 72 Stat. 783; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Administrator" (meaning Administrator of the Federal Aviation Agency) pursuant to Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator thereof under this section to the Secretary of Transportation. See section 1655(c)(1) of this title.

§ 1463. Weather Service

In order to promote safety and efficiency in air navigation to the highest possible degree, the Secretary of Commerce shall, in addition to any other functions or duties pertaining to weather information for other purposes, (1) make such observations, measurements, investigations, and studies of atmospheric phenomena, and establish such meteorological offices and stations, as are necessary or best suited for ascertaining, in advance, information concerning probable weather conditions; (2) furnish such reports, forecasts, warnings, and advices to the Secretary of Transportation, and to such persons engaged in civil aeronautics as may be designated by the Secretary of Transportation, and to such other persons as the Secretary of Commerce may determine, and such reports shall be made in such manner and with such frequency as will best result in safety in and in facilitating air navigation; (3) cooperate with persons engaged in air commerce, or employees thereof, in meteorological service, establish and maintain reciprocal arrangements under which this provision is to be carried out and collect and disseminate weather reports available from aircraft in flight; (4) establish and coordinate the international exchanges of meteorological information required for the safety and efficiency of air navigation; (5) participate in the development of an international basic meteorological reporting network, including the establishment, operation, and maintenance of reporting stations on the high seas, in polar regions, and in foreign countries in cooperation with other governmental agencies of the United States and the meteorological services of foreign countries and with persons engaged in air commerce; (6) coordinate meteorological requirements in the United States in order to maintain standard observations, promote efficient use of facilities and avoid duplication of services unless such duplication tends to promote the safety and efficiency of air navigation; and (7) promote and develop meteorological science and foster and support research projects in meteorology through the utilization of private and governmental research facilities and provide for the publication of the results of such research projects unless such publication would be contrary to the public interest.

(Pub. L. 85-726, title VIII, § 803, Aug. 23, 1958, 72 Stat. 783; 1965 Reorg. Plan No. II, eff. July 13, 1965, §§ 1, 2, 30 F.R. 8819, 79 Stat 1318; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

TRANSFER OF FUNCTIONS

The Office of Chief of the Weather Bureau was abolished and his functions transferred to the Secretary of Commerce by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. For further details, see Transfer of Functions note under section 1152 of this title.

"Secretary of Transportation" was substituted for "Administrator" (meaning Administrator of the Federal Aviation Agency) pursuant to Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator thereof under this section to the Secretary of Transportation. See section 1655(c)(1) of this title.

SUBCHAPTER IX—PENALTIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1655 of this title.

§ 1471. Civil penalties; compromise; liens

(a)(1) Any person who violates (A) any provision of subchapter III, IV, V, VI, VII, or XII of this chapter or of section 1514 of this title or any rule, regulation, or order issued thereunder, or under section 1482(i) of this title, or any term, condition, or limitation of any permit or certificate issued under subchapter IV of this chapter, or (B) any rule or regulation issued by the Postmaster General under this chapter, shall be subject to a civil penalty of not to exceed $1,000 for each such violation, except that the amount of such civil penalty shall not exceed $10,000 for each such violation which relates to the transportation of hazardous materials. If such violation is a continuing one, each day of such violation shall constitute a separate offense. The amount of any such civil penalty which relates to the transportation of hazard-

ous materials shall be assessed by the Secretary, or his delegate, upon written notice upon a finding of violation by the Secretary, after notice and an opportunity for a hearing. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require. This subsection shall not apply to members of the Armed Forces of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Secretary of Transportation or Board, as appropriate, a timely report of any such action taken.

(2) Any such civil penalty may be compromised by the Secretary of Transportation in the case of violations of subchapters III, V, VI, or XII of this chapter, or any rule, regulation, or order issued thereunder, or by the Board in the case of violations of subchapters IV or VII of this chapter, or any rule, regulation, or order issued thereunder, or under section 1482(i) of this title, or any term, condition, or limitation of any permit or certificate issued under subchapter IV of this chapter, or by the Postmaster General in the case of regulations issued by him. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(b) In case an aircraft is involved in such violation and the violation is by the owner or person in command of the aircraft, such aircraft shall be subject to lien for the penalty: *Provided*, That this subsection shall not apply to a violation of a rule or regulation of the Postmaster General.

(Pub. L. 85-726, title IX, § 901, Aug. 23, 1958, 72 Stat. 783; Pub. L. 87-528, § 12, July 10, 1962, 76 Stat. 149; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937; Pub. L. 93-366, title I, § 107, Aug. 5, 1974, 88 Stat. 414; Pub. L. 93-633, title I, § 113(b), Jan. 3, 1975, 88 Stat. 2162.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

The Uniform Code of Military Justice, referred to in subsec. (a)(1), is classified generally to chapter 47 (§ 801 et seq.) of Title 10, Armed Forces.

AMENDMENTS

1975—Subsec. (a)(1). Pub. L. 93-633 limited the amount of the civil penalty to $10,000 for each violation which relates to the transportation of hazardous materials, and provided for assessment of the civil penalty relating to transportation of hazardous materials and consideration of stated criteria in determining the amount of the penalty.

1974—Subsec. (a)(1). Pub. L. 93-366 added reference to section 1514 of this title.

1962—Subsec. (a). Pub. L. 87-528 included violations of provisions of subchapter IV, or any rule, regulation, or order issued thereunder, and of section 1482(i) of this title, or terms, conditions, or limitations of permits or certificates issued under subchapter IV, provided that each day of violation of the subsection constitutes a separate offense, and empowered the Board to compromise penalties in case of violations of subchapter IV, or rules, regulations, or orders thereunder, or of section 1482(i) of its title, or terms, conditions, or limitations thereunder.

EFFECTIVE DATE OF 1975 AMENDMENT; CONTINUANCE OF PRIOR PROVISIONS; TWO YEAR LIMITATION AFTER JAN. 3, 1975, FOR ARRANGEMENTS, INCLUDING LICENSES, ETC., TO COMPLY WITH PUB. L. 93-633; PENDING PROCEEDINGS UNAFFECTED

Amendment by Pub. L. 93-633 effective Jan. 3, 1975, except as otherwise provided, see section 114 of Pub. L. 93-633, set out as an Effective Date of 1975 Amendment note under section 1801 of this title.

EFFECTIVE DATE

Subchapter effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now the Federal Aviation Administrator] first appointed under this chapter qualifies and takes office, see section 1505(2) of Pub. L. 85-726, set out as a note under section 1301 of this title. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

TRANSFER OF FUNCTIONS

In subsec. (a), "Secretary of Transportation" was substituted for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under this subchapter to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

§ 1472. Criminal penalties

(a) Generally

Any person who knowingly and willfully violates any provision of this chapter (except subchapters III, V, VI, VII, and XII of this chapter), or any order, rule, or regulation issued by the Secretary of Transportation or by the Board under any such provision or any term, condition, or limitation of any certificate or permit issued under subchapter IV of this chapter, for which no penalty is otherwise provided in this section or in section 1474 of this title, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject for the first offense to a fine of not more than $500, and for any subsequent offense to a fine of not more than $2,000. If such violation is a continuing one, each day of such violation shall constitute a separate offense.

(b) Forgery of certificates and false marking of aircraft

Any person who knowingly and willfully forges, counterfeits, alters, or falsely makes any certificate authorized to be issued under this chapter, or knowingly uses or attempts to use any such fraudulent certificate, and any person who knowingly and willfully displays or causes

to be displayed on any aircraft, any marks that are false or misleading as to the nationality or registration of the aircraft, shall be subject to a fine of not exceeding $1,000 or to imprisonment not exceeding three years, or to both such fine and imprisonment.

(c) Interference with air navigation

A person shall be subject to a fine of not exceeding $5,000 or to imprisonment not exceeding five years, or to both such fine and imprisonment, who—

(1) with intent to interfere with air navigation within the United States, exhibits within the United States any light or signal at such place or in such manner that it is likely to be mistaken for a true light or signal established pursuant to this chapter, or for a true light or signal in connection with an airport or other air navigation facility; or

(2) after due warning by the Secretary of Transportation, continues to maintain any misleading light or signal; or

(3) knowingly removes, extinguishes, or interferes with the operation of any such true light or signal.

(d) Offering, granting, giving, soliciting, or accepting rebates or concessions

(1) Any air carrier, foreign air carrier, or ticket agent, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, offer, grant, or give, or cause to be offered, granted, or given, any rebate or other concession in violation of the provisions of this chapter, or who, by any device or means, shall, knowingly and willfully, assist, or shall willingly suffer or permit, any person to obtain transportation or services subject to this chapter at less than the rates, fares, or charges lawfully in effect, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be subject for each offense to a fine of not less than $100 and not more than $5,000.

(2) Any person who, in any manner or by any device, knowingly and willfully solicits, accepts, or receives a refund or remittance of any portion of the rates, fares, or charges lawfully in effect for the air transportation of property, or for any service in connection therewith, or knowingly solicits, accepts, or receives any privilege, favor, or facility, with respect to matters required by the Board to be specified in currently effective tariffs applicable to the air transportation of property, shall be fined not less than $100, nor more than $5,000, for each offense.

(e) Failure to file reports; falsification of records

Any air carrier, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, fail or refuse to make a report to the Board or Secretary of Transportation as required by this chapter, or to keep or preserve accounts, records, and memoranda in the form and manner prescribed or approved by the Board or Secretary of Transportation, or shall, knowingly and willfully, falsify, mutilate, or alter any such report, account, record, or memorandum, or shall knowingly and willfully file any false report, account, record, or memorandum, shall be deemed guilty of a misdemeanor and, upon conviction thereof, be subject for each offense to a fine of not less than $100 and not more than $5,000.

(f) Divulging information; information to Congressional committees

If the Secretary of Transportation or any member of the Board, or any officer or employee of either, shall knowingly and willfully divulge any fact or information which may come to his knowledge during the course of an examination of the accounts, records, and memoranda of any air carrier, or which is withheld from public disclosure under section 1504 of this title, except as he may be directed by the Secretary of Transportation or the Board in the case of information ordered to be withheld by either, or by a court of competent jurisdiction or a judge thereof, he shall upon conviction thereof be subject for each offense to a fine of not more than $5,000 or imprisonment for not more than two years, or both: *Provided*, That nothing in this section shall authorize the withholding of information by the Secretary of Transportation or Board from the duly authorized committees of the Congress.

(g) Refusal to testify

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, or documents, if in his power to do so, in obedience to the subpena or lawful requirement of the Board or Secretary of Transportation shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than $100 nor more than $5,000, or imprisonment for not more than one year, or both.

(h) Safe transportation of hazardous materials

(1) In carrying out his responsibilities under this chapter, the Secretary of Transportation may exercise the authority vested in him by section 1804 of this title to provide by regulation for the safe transportation of hazardous materials by air.

(2) A person is guilty of an offense if he willfully delivers or causes to be delivered to an air carrier or to the operator of a civil aircraft for transportation in air commerce, or if he recklessly causes the transportation in air commerce of, any shipment, baggage, or other property which contains a hazardous material, in violation of any rule, regulation, or requirement with respect to the transportation of hazardous materials issued by the Secretary of Transportation under this chapter. Upon conviction, such person shall be subject, for each offense, to a fine of not more than $25,000, imprisonment for a term not to exceed 5 years, or both.

(3) Nothing in this subsection shall be construed to prohibit or regulate the transportation by any individual, for personal use, of any firearm (as defined in paragraph (4) of section 232 of title 18), or any ammunition therefor.

(i) Aircraft piracy

(1) Whoever commits or attempts to commit aircraft piracy, as herein defined, shall be punished—

(A) by imprisonment for not less than 20 years; or

(B) if the death of another person results from the commission or attempted commis-

sion of the offense, by death or by imprisonment for life.

(2) As used in this subsection, the term "aircraft piracy" means any seizure or exercise of control, by force or violence or threat of force or violence, or by any other form of intimidation, and with wrongful intent, of an aircraft within the special aircraft jurisdiction of the United States.

(3) An attempt to commit aircraft piracy shall be within the special aircraft jurisdiction of the United States even though the aircraft is not in flight at the time of such attempt if the aircraft would have been within the special aircraft jurisdiction of the United States had the offense of aircraft piracy been completed.

(j) Interference with flight crew members or flight attendants

Whoever, while aboard an aircraft within the special aircraft jurisdiction of the United States, assaults, intimidates, or threatens any flight crew member or flight attendant (including any steward or stewardess) of such aircraft, so as to interfere with the performance by such member or attendant of his duties or lessen the ability of such member or attendant to perform his duties, shall be fined not more than $10,000 or imprisoned not more than twenty years, or both. Whoever in the commission of any such act uses a deadly or dangerous weapon shall be imprisoned for any term of years or for life.

(k) Certain crimes aboard aircraft in flight

(1) Whoever, while aboard an aircraft within the special aircraft jurisdiction of the United States, commits an act which, if committed within the special maritime and territorial jurisdiction of the United States, as defined in section 7 of title 18, would be in violation of section 113, 114, 661, 662, 1111, 1112, 1113, 2031, 2032, or 2111 of such title 18 shall be punished as provided therein.

(2) Whoever, while aboard an aircraft within the special aircraft jurisdiction of the United States, commits an act, which, if committed in the District of Columbia would be in violation of section 9 of the Act entitled "An Act for the preservation of the public peace and the protection of property within the District of Columbia", approved July 29, 1892, as amended (D.C. Code, sec. 22-1112), shall be punished as provided therein.

(l) Carrying weapons or explosives aboard aircraft

(1) Whoever, while aboard, or while attempting to board, any aircraft in, or intended for operation in, air transportation or intrastate air transportation, has on or about his person or his property a concealed deadly or dangerous weapon, which is, or would be, accessible to such person in flight, or any person who has on or about his person, or who has placed, attempted to place, or attempted to have placed aboard such aircraft any bomb, or similar explosive or incendiary device, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(2) Whoever willfully and without regard for the safety of human life, or with reckless disregard for the safety of human life, shall commit an act prohibited by paragraph (1) of this subsection, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(3) This subsection shall not apply to law enforcement officers of any municipal or State government, or the Federal Government, who are authorized or required within their official capacities to carry arms, or to persons who may be authorized, under regulations issued by the Secretary of Transportation, to carry deadly or dangerous weapons in air transportation or intrastate air transportation; nor shall it apply to persons transporting weapons contained in baggage which is not accessible to passengers in flight if the presence of such weapons has been declared to the air carrier.

(m) False information

(1) Whoever imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by subsection (i), (j), (k), or (l) of this section, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(2) Whoever willfully and maliciously, or with reckless disregard for the safety of human life, imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by subsection (i), (j), (k), or (l) of this section, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(n) Aircraft piracy outside special aircraft jurisdiction of the United States

(1) Whoever aboard an aircraft in flight outside the special aircraft jurisdiction of the United States commits "an offense", as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft, and is afterward found in the United States shall be punished—

(A) by imprisonment for not less than 20 years; or

(B) if the death of another person results from the commission or attempted commission of the offense, by death or by imprisonment for life.

(2) A person commits "an offense", as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft when, while aboard an aircraft in flight, he—

(A) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act; or

(B) is an accomplice of a person who performs or attempts to perform any such act.

(3) This subsection shall only be applicable if the place of takeoff or the place of actual landing of the aircraft on board which the offense, as defined in paragraph (2) of this subsection, is committed is situated outside the territory of the State of registration of that aircraft.

(4) For purposes of this subsection an aircraft is considered to be in flight from the moment when all the external doors are closed following embarkation until the moment when one such door is opened for disembarkation, or in the case of a forced landing, until the competent authorities take over responsibility for the aircraft and for the persons and property aboard.

(o) Investigations by Federal Bureau of Investigation

Violations of subsections (i) through (n), inclusive, of this section shall be investigated by the Federal Bureau of Investigation of the Department of Justice.

(p) Interference with aircraft accident investigation

Any person who knowingly and without authority removes, conceals, or withholds any part of a civil aircraft involved in an accident, or any property which was aboard such aircraft at the time of the accident, shall be subject to a fine of no less than $100 nor more than $5,000, or imprisonment for not more than one year, or both.

(Pub. L. 85-726, title IX, § 902, Aug. 23, 1958, 72 Stat. 784; Pub. L. 87-197, § 1, Sept. 5, 1961, 75 Stat. 466; Pub. L. 87-528, § 13, July 10, 1962, 76 Stat. 150; Pub. L. 87-810 § 4, Oct. 15, 1962, 76 Stat. 921; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937; Pub. L. 91-449, § 1(3), Oct. 14, 1970, 84 Stat. 921; Pub. L. 93-366, title I, §§ 103, 104, title II, § 203, Aug. 5, 1974, 88 Stat. 410, 411, 417; Pub. L. 93-623, § 8(b), Jan. 3, 1975, 88 Stat. 2105; Pub. L. 93-633, title I, § 113(c), Jan. 3, 1975, 88 Stat. 2162.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), (c)(1), (d)(1), (e), and (h)(1), (2), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

AMENDMENTS

1975—Subsec. (d). Pub. L. 93-623 designated existing provisions as par. (1), and added par. (2).

Subsec. (h). Pub. L. 93-633 added par. (1) authorization of the Secretary of Transportation to provide by regulation for safe transportation of hazardous materials by air; incorporated former par. (1) provisions in par. (2), substituted willfulness for knowingly and included recklessness as elements of the offense, substituted provision for application of the offense to hazardous materials rather than to explosives or other dangerous articles, increased the limits of the penalty to $25,000 and to five years imprisonment or both for prior limitations set at $1,000 or one year imprisonment or both and set at $10,000 or ten years imprisonment or both in cases of death or bodily injury resulting from an offense hereunder; deleted former par. (2) authorization of Administrator adoption and termination of regulations of the Interstate Commerce Commission relating to transportation, etc., of explosives or other dangerous articles to shipment and carriage by air of such articles, and made such regulations the regulations of the Administrator; and added par. (3) provisions respecting transportation of firearms and ammunition therefor for personal use.

1974—Subsec. (i)(1). Pub. L. 93-366, § 104(a), substituted provisions authorizing the imposition of imprisonment for not less than 20 years, or the death penalty or life imprisonment, where the death of another person resulted from the commission or attempted commission of the offense, for provisions authorizing the imposition of the death penalty if the verdict of the jury so recommended, or, in the case of guilty plea, or a not guilty plea where the defendant waived a jury trial, if the court in its discretion so ordered, or imprisonment for not less than 20 years, if the death penalty was not imposed.

Subsec. (i)(2). Pub. L. 93-366, § 103(a), added "or by any other form of intimidation" following "threat of force or violence".

Subsec. (i)(3). Pub. L. 93-366, § 104(b), added subsec. (i)(3).

Subsec. (*l*). Pub. L. 93-366, § 203, reorganized former provisions by designating prohibited activities as cl. (1) and, as so designated added requirement that weapon is, or would be, accessible in flight and expanded activities subject to penalties to include placing, attempting to place, etc., aboard the aircraft any bomb, or similar explosive or incendiary device, and designating exceptions as cl. (3) and, as so designated, added exception relating to weapons not accessible to passengers in flight if their presence was declared to the air carrier, and added provisions designated as cl. (2).

Subsec. (n). Pub. L. 93-366, § 103(b), added subsec. (n). Former subsec. (n) redesignated (o).

Subsec. (o). Pub. L. 93-366, § 103(b), (c), redesignated subsec. (n) as (o) and, so redesignated, substituted "(n)" for "(m). Former subsec. (o) redesignated as (p).

Subsec. (p). Pub. L. 93-366, § 103(b), redesignated subsec. (o) as (p).

1970—Subsecs. (i), (j) and (k). Pub. L. 91-449 substituted "within the special aircraft jurisdiction of the United States", for "in flight in air commerce" in subsecs. (i), (j) and (k), wherever appearing.

1962—Subsec. (a). Pub. L. 87-528 inserted "by the Administrator or by the Board" and included violations of section 1474 of this title within the subsection.

Subsec. (o). Pub. L. 87-810 added subsec. (o).

1961—Subsecs. (i) to (n). Pub. L. 87-197 added subsecs. (i) to (n).

EFFECTIVE DATE OF 1975 AMENDMENT; CONTINUANCE OF PRIOR PROVISIONS; TWO YEAR LIMITATION AFTER JAN. 3, 1975, FOR ARRANGEMENTS, INCLUDING LICENSES, ETC., TO COMPLY WITH PUB. L. 93-633; PENDING PROCEEDINGS UNAFFECTED

Amendment by Pub. L. 93-633 effective Jan. 3, 1975, except as otherwise provided, see section 114 of Pub. L. 93-633, set out as an Effective Date of 1975 Amendment note under section 1801 of this title.

TRANSFER OF FUNCTIONS

In subsecs. (a), (c)(2), (e), (f), (g), and (*l*)(3), "Secretary of Transportation" was substituted for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under this subchapter to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

HAZARDOUS SUBSTANCES

Federal Hazardous Substances Act as not modifying this section, see Pub. L. 86-613, § 18, formerly § 17, July 12, 1960, 74 Stat. 380, set out as a note under section 1261 of Title 15, Commerce and Trade.

CROSS REFERENCES

Penalties for violation of security provisions, see section 1523 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1357, 1473 of this title; title 7 section 136q.

§ 1473. Venue and prosecution of offenses

(a) District of offense or district of arrest

The trial of any offense under this chapter shall be in the district in which such offense is committed; or, if the offense is committed out of the jurisdiction of any particular State or district, the trial shall be in the district where the offender, or any one of two or more joint offenders, is arrested or is first brought. If such

offender or offenders are not so arrested or brought into any district, an indictment or information may be filed in the district of the last known residence of the offender or of any one of two or more joint offenders, or if no such residence is known the indictment or information may be filed in the District of Columbia. Whenever the offense is begun in one jurisdiction and completed in another, or committed in more than one jurisdiction, it may be dealt with, inquired of, tried, determined, and punished in any jurisdiction in which such offense was begun, continued, or completed, in the same manner as if the offense had been actually and wholly committed therein.

(b) Procedures in respect of civil penalties

(1) Any civil penalty imposed under this chapter may be collected by proceedings in personam against the person subject to the penalty and, in case the penalty is a lien, by proceedings in rem against the aircraft, or by either method alone. Such proceedings shall conform as nearly as may be to civil suits in admiralty, except that either party may demand trial by jury of any issue of fact, if the value in controversy exceeds $20, and the facts so tried shall not be reexamined other than in accordance with the rules of the common law. The fact that in a libel in rem the seizure is made at a place not upon the high seas or navigable waters of the United States shall not be held in any way to limit the requirement of the conformity of the proceedings to civil suits in rem in admiralty.

(2) Any aircraft subject to such lien may be summarily seized by and placed in the custody of such persons as the Board or Secretary of Transportation may by regulation prescribe, and a report of the cause shall thereupon be transmitted to the United States attorney for the judicial district in which the seizure is made. The United States attorney shall promptly institute proceedings for the enforcement of the lien or notify the Board or Secretary of Transportation of his failure to so act.

(3) The aircraft shall be released from such custody upon payment of the penalty or the amount agreed upon in compromise; or seizure in pursuance of process of any court in proceedings in rem for enforcement of the lien, or notification by the United States attorney of failure to institute such proceedings; or deposit of a bond in such amount and with such sureties as the Board or Secretary of Transportation may prescribe, conditioned upon the payment of the penalty or the amount agreed upon in compromise.

(4) The Supreme Court of the United States, and under its direction other courts of the United States, may prescribe rules regulating such proceedings in any particular not provided by law.

(c) Procedures in respect to aircraft piracy penalties

(1) A person shall be subjected to the penalty of death for any offense prohibited by section 1472(i) or 1472(n) of this title only if a hearing is held in accordance with this subsection.

(2) When a defendant is found guilty of or pleads guilty to an offense under section 1472(i) or 1472(n) of this title for which one of the sentences provided is death, the judge who presided at the trial or before whom the guilty plea was entered shall conduct a separate sentencing hearing to determine the existence or nonexistence of the factors set forth in paragraphs (6) and (7), for the purpose of determining the sentence to be imposed. The hearing shall not be held if the Government stipulates that none of the aggravating factors set forth in paragraph (7) exists or that one or more of the mitigating factors set forth in paragraph (6) exists. The hearings shall be conducted—

(A) before the jury which determined the defendant's guilt;

(B) before a jury impaneled for the purpose of the hearing if—

(i) the defendant was convicted upon a plea of guilty;

(ii) the defendant was convicted after a trial before the court sitting without a jury; or

(iii) the jury which determined the defendant's guilt has been discharged by the court for good cause; or

(C) before the court alone, upon the motion of the defendant and with the approval of the court and of the Government.

(3) In the sentencing hearing the court shall disclose to the defendant or his counsel all material contained in any presentence report, if one has been prepared, except such material as the court determines is required to be withheld for the protection of human life or for the protection of the national security. Any presentence information withheld from the defendant shall not be considered in determining the existence or the nonexistence of the factors set forth in paragraph (6) or (7). Any information relevant to any of the mitigating factors set forth in paragraph (6) may be presented by either the Government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials; but the admissibility of information relevant to any of the aggravating factors set forth in paragraph (7) shall be governed by the rules governing the admission of evidence at criminal trials. The Government and the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any of the factors set forth in paragraph (6) or (7). The burden of establishing the existence of any of the factors set forth in paragraph (7) is on the Government. The burden of establishing the existence of any of the factors set forth in paragraph (6) is on the defendant.

(4) The jury or, if there is no jury, the court shall return a special verdict setting forth its findings as to the existence or nonexistence of each of the factors set forth in paragraph (6) and as to the existence or nonexistence of each of the factors set forth in paragraph (7).

(5) If the jury or, if there is no jury, the court finds by a preponderance of the information that one or more of the factors set forth in paragraph (7) exists and that none of the factors set forth in paragraph (6) exists, the court shall sentence the defendant to death. If the jury or, if there is no jury, the court finds that none of the aggravating factors set forth in

paragraph (7) exists, or finds that one or more of the mitigating factors set forth in paragraph (6) exists, the court shall not sentence the defendant to death but shall impose any other sentence provided for the offense for which the defendant was convicted.

(6) The court shall not impose the sentence of death on the defendant if the jury or, if there is no jury, the court finds by a special verdict as provided in paragraph (4) that at the time of the offense—

(A) he was under the age of eighteen;

(B) his capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution;

(C) he was under unusual and substantial duress, although not such duress as to constitute a defense to prosecution;

(D) he was a principal (as defined in section 2(a) of title 18) in the offense, which was committed by another, but his participation was relatively minor, although not so minor as to constitute a defense to prosecution; or

(E) he could not reasonably have foreseen that his conduct in the course of the commission of the offense for which he was convicted would cause, or would create a grave risk of causing death to another person.

(7) If no factor set forth in paragraph (6) is present, the court shall impose the sentence of death on the defendant if the jury or, if there is no jury, the court finds by a special verdict as provided in paragraph (4) that—

(A) the death of another person resulted from the commission of the offense but after the defendant had seized or exercised control of the aircraft; or

(B) the death of another person resulted from the commission or attempted commission of the offense, and—

(i) the defendant has been convicted of another Federal or State offense (committed either before or at the time of the commission or attempted commission of the offense) for which a sentence of life imprisonment or death was imposable;

(ii) the defendant has previously been convicted of two or more State or Federal offenses with a penalty of more than one year imprisonment (committed on different occasions before the time of the commission or attempted commission of the offense), involving the infliction of serious bodily injury upon another person;

(iii) in the commission or attempted commission of the offense, the defendant knowingly created a grave risk of death to another person in addition to the victim of the offense or attempted offense; or

(iv) the defendant committed or attempted to commit the offense in an especially heinous, cruel, or depraved manner.

(Pub. L. 85-726, title IX, § 903, Aug. 23, 1958, 72 Stat. 786; Pub. L. 87-197, § 2, Sept. 5, 1961, 75 Stat. 467; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937; Pub. L. 93-366, title I, § 105, Aug. 5, 1974, 88 Stat. 411.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(1), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

AMENDMENTS

1974—Subsec. (c). Pub. L. 93-366 added subsec. (c).

1961—Subsec. (a). Pub. L. 87-197 substituted provision for trial of an offense committed out of the jurisdiction of any particular State or district in the district where the offender, or any one of two or more offenders, is arrested or is first brought, for provision directing trial of an offense committed upon the high seas or out of the jurisdiction of any particular State or district in the district where the offender may be found or into which he shall be first brought, and inserted provisions for the filing of indictment or information in the district of the last known residence of the offender or any one of two or more joint offenders, or if no such residence is known, in the District of Columbia, and for trial of offenses, including offenses committed in more than one jurisdiction, in the jurisdiction described in the section, including the jurisdiction in which the offense was continued.

TRANSFER OF FUNCTIONS

In subsec. (b)(2), (3), "Secretary of Transportation" was substituted for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

§ 1474. Violations of section 1509 of this title

(a) Any person who (1) violates any entry or clearance regulation made under section 1509(c) of this title, or (2) any immigration regulations made under such section, shall be subject to a civil penalty of $500 which may be remitted or mitigated by the Secretary of the Treasury, or the Attorney General, respectively, in accordance with such proceedings as the Secretary or Attorney General shall by regulation prescribe. Any person violating any customs regulation made under section 1509(b) of this title, or any provision of the customs or public-health laws or regulations thereunder made applicable to aircraft by regulation under such section shall be subject to a civil penalty of $500, and any aircraft used in connection with any such violation shall be subject to seizure and forfeiture as provided for in such customs laws, which penalty and forfeiture may be remitted or mitigated by the Secretary of the Treasury. In case the violation is by the owner or person in command of the aircraft, the penalty shall be a lien against the aircraft. Any person violating any provision of the laws and regulations relating to animal and plant quarantine made applicable to civil air navigation by regulation in accordance with section 1509(d) of this title shall be subject to the same penalties as those provided by the said laws for violations thereof. Any civil penalty imposed under this section may be collected by proceedings in personam against the person subject to the penal-

ty and/or in case the penalty is a lien, by proceedings in rem against the aircraft. Such proceedings shall conform as nearly as may be to civil suits in admiralty; except that either party may demand trial by jury of any issue of fact, if the value in controversy exceeds $20, and facts so tried shall not be reexamined other than in accordance with the rules of the common law. The fact that in a libel in rem the seizure is made at a place not upon the high seas or navigable waters of the United States, shall not be held in any way to limit the requirement of the conformity of the proceedings to civil suits in rem in admiralty. The Supreme Court of the United States, and under its direction other courts of the United States, are authorized to prescribe rules regulating such proceedings in any particular not provided by law. The determination under this section as to the remission or mitigation of a civil penalty imposed under this section shall be final. In case libel proceedings are pending at any time during the pendency of remission or mitigation proceedings, the Secretary or Attorney General shall give notice thereof to the United States attorney prosecuting the libel proceedings.

(b) Any aircraft subject to a lien for any civil penalty imposed under this section may be summarily seized by and placed in the custody of such persons as the appropriate Secretary or Attorney General may by regulation prescribe and a report of the case thereupon transmitted to the United States attorney for the judicial district in which the seizure is made. The United States attorney shall promptly institute proceedings for the enforcement of the lien or notify the Secretary of his failure so to act. The aircraft shall be released from such custody upon (1) payment of the penalty or so much thereof as is not remitted or mitigated, (2) seizure in pursuance of process of any court in proceedings in rem for enforcement of the lien, or notification by the United States attorney of failure to institute such proceedings, or (3) deposit of a bond in such amount and with such sureties as the Secretary or Attorney General may prescribe, conditioned upon the payment of the penalty or so much thereof as is not remitted or mitigated.

(Pub. L. 85–726, title IX, § 904, Aug. 23, 1958, 72 Stat. 787.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1472 of this title.

SUBCHAPTER X—PROCEDURE

§ 1481. Conduct of proceedings

The Board and the Secretary of Transportation, subject to the provisions of this chapter and subchapter II of chapter 5, and chapter 7, of title 5, may conduct their proceedings in such manner as will be conducive to the proper dispatch of business and to the ends of justice. No member of the Board or the Secretary of Transportation shall participate in any hearing or proceeding in which he has a pecuniary interest. Any person may appear before the Board or the Secretary of Transportation and be heard in person or by attorney. The Board, in its discretion, may enter its appearance and participate as an interested party in any proceeding conducted by the Secretary of Transportation under subchapter III of this chapter, and in any proceeding conducted by the Secretary of Transportation under subchapter VI of this chapter from which no appeal is provided to the Board. Every vote and official act of the Board and the Secretary of Transportation shall be entered of record, and the proceedings thereof shall be open to the public upon request of any interested party, unless the Board or the Secretary of Transportation determines that secrecy is requisite on grounds of national defense.

(Pub. L. 85–726, title X, § 1001, Aug. 23, 1958, 72 Stat. 788; Pub. L. 89–670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

REFERENCES IN TEXT

This chapter, referred to in text, read in the original, "this Act", meaning Pub. L. 85–726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

CODIFICATION

"Subchapter II of chapter 5, and chapter 7, of title 5" was substituted for "the Administrative Procedure Act" on authority of section 7(b) of Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

EFFECTIVE DATE

Subchapter effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now the Federal Aviation Administration] first appointed under this chapter qualifies and takes office, see section 1505(2) of Pub. L. 85–726, set out as a note under section 1301 of this title. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Administrator" and "Administration" pursuant to Pub. L. 89–670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator thereof under this section to the Secretary of Transportation. See section 1655(c)(1) of this title.

§ 1482. Complaints to and investigations by Secretary of Transportation and Board

(a) Filing of complaints; complaints against members of the Armed Forces

Any person may file with the Secretary of Transportation or the Board, as to matters within their respective jurisdictions, a complaint in writing with respect to anything done or omitted to be done by any person in contravention of any provisions of this chapter, or of any requirement established pursuant thereto. If the person complained against shall not satisfy the complaint and there shall appear to be any reasonable ground for investigating the complaint, it shall be the duty of the Secretary of Transportation or the Board to investigate the matters complained of. Whenever the Secretary of Transportation or the Board is of the opinion that any complaint does not state facts which warrant an investigation or action, such complaint may be dismissed without hearing. In the case of complaints against a member of

the Armed Forces of the United States acting in the performance of his official duties, the Secretary of Transportation or the Board, as the case may be, shall refer the complaint to the Secretary of the department concerned for action. The Secretary shall, within ninety days after receiving such a complaint, inform the Secretary of Transportation or the Board of his disposition of the complaint, including a report as to any corrective or disciplinary actions taken.

(b) Investigations on initiative of Administrator or Board

The Secretary of Transportation or Board, with respect to matters within their respective jurisdictions, is empowered at any time to institute an investigation, on their own initiative, in any case and as to any matter or thing within their respective jurisdictions, concerning which complaint is authorized to be made to or before the Secretary of Transportation or Board by any provision of this chapter, or concerning which any question may arise under any of the provisions of this chapter, or relating to the enforcement of any of the provisions of this chapter. The Secretary of Transportation or the Board shall have the same power to proceed with any investigation instituted on their own motion as though it had been appealed to by complaint.

(c) Entry of orders for compliance with chapter

If the Secretary of Transportation or the Board finds, after notice and hearing, in any investigation instituted upon complaint or upon their own initiative, with respect to matters within their jurisdiction, that any person has failed to comply with any provision of this chapter or any requirement established pursuant thereto, the Secretary of Transportation or the Board shall issue an appropriate order to compel such person to comply therewith.

(d) Power to prescribe rates and practices of air carriers

Whenever, after notice and hearing, upon complaint, or upon its own initiative, the Board shall be of the opinion that any individual or joint rate, fare, or charge demanded, charged, collected or received by any air carrier for interstate or overseas air transportation, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, the Board shall determine and prescribe the lawful rate, fare, or charge (or the maximum or minimum, or the maximum and minimum thereof) thereafter to be demanded, charged, collected, or received, or the lawful classification, rule, regulation, or practice thereafter to be made effective: *Provided*, That as to rates, fares, and charges for overseas air transportation, the Board shall determine and prescribe only a just and reasonable maximum or minimum, or maximum and minimum rate, fare, or charge.

(e) Rule of rate making

In exercising and performing its powers and duties with respect to the determination of rates for the carriage of persons or property, the Board shall take into consideration, among other factors—

(1) The effect of such rates upon the movement of traffic:

(2) The need in the public interest of adequate and efficient transportation of persons and property by air carriers at the lowest cost consistent with the furnishing of such service;

(3) Such standards respecting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law;

(4) The inherent advantages of transportation by aircraft; and

(5) The need of each air carrier for revenue sufficient to enable such air carrier, under honest, economical, and efficient management, to provide adequate and efficient air carrier service.

(f) Removal of discrimination in foreign air transportation

Whenever, after notice and hearing, upon complaint, or upon its own initiative, the Board shall be of the opinion that any individual or joint rate, fare, or charge demanded, charged, collected, or received by any air carrier or foreign air carrier for foreign air transportation, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, is or will be unjustly discriminatory, or unduly preferential, or unduly prejudicial, the Board may alter the same to the extent necessary to correct such discrimination, preference, or prejudice and make an order that the air carrier or foreign air carrier shall discontinue demanding, charging, collecting, or receiving any such discriminatory, preferential, or prejudicial rate, fare, or charge or enforcing any such discriminatory, preferential, or prejudicial classification, rule, regulation, or practice.

(g) Suspension of rates

Whenever any air carrier shall file with the Board a tariff stating a new individual or joint (between air carriers) rate, fare, or charge for interstate or overseas air transportation or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the Board is empowered, upon complaint or upon its own initiative, at once, and, if it so orders, without answer or other formal pleading by the air carrier, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, or charge, or such classification, rule, regulation, or practice; and pending such hearing and the decision thereon, the Board, by filing with such tariff, and delivering to the air carrier affected thereby, a statement in writing of its reasons for such suspension, may suspend the operation of such tariff and defer the use of such rate, fare, or charge, or such classification, rule, regulation, or practice, for a period of ninety days, and, if the proceeding has not been concluded and a final order made within such period, the Board may, from time to time, extend the period of suspension, but not for a longer period in the aggregate than one hundred and eighty days beyond the time when such tariff would otherwise go into effect; and, after hearing, whether completed before or after the rate,

fare, charge, classification, rule, regulation, or practice goes into effect, the Board may make such order with reference thereto as would be proper in a proceeding instituted after such rate, fare, charge, classification, rule, regulation, or practice had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed rate, fare, charge, classification, rule, regulation, or practice shall go into effect at the end of such period: *Provided,* That this subsection shall not apply to any initial tariff filed by any air carrier.

(h) Power to prescribe divisions of rates

Whenever, after notice and hearing, upon complaint or upon its own initiative, the Board is of the opinion that the divisions of joint rates, fares, or charges for air transportation are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the air carriers or foreign air carriers parties thereto, the Board shall prescribe the just, reasonable, and equitable divisions thereof to be received by the several air carriers. The Board may require the adjustment of divisions between such air carriers from the date of filing the complaint or entry of order of investigation, or such other date subsequent thereto as the Board finds to be just, reasonable, and equitable.

(i) Power to establish through air transportation service

The Board shall, whenever required by the public convenience and necessity, after notice and hearing, upon complaint or upon its own initiative, establish through service and joint rates, fares, or charges (or the maxima or minima, or the maxima and minima thereof) for interstate or overseas air transportation, or the classifications, rules, regulations, or practices affecting such rates, fares, or charges, or the value of the service thereunder, and the terms and conditions under which such through service shall be operated: *Provided,* That as to joint rates, fares, and charges for overseas air transportation the Board shall determine and prescribe only just and reasonable maximum or minimum or maximum and minimum joint rates, fares, or charges.

(j) Suspension and rejection of rates in foreign air transportation

(1) Whenever any air carrier or foreign air carrier shall file with the Board a tariff stating a new individual or joint (between air carriers, between foreign air carriers, or between an air carrier or carriers and a foreign air carrier or carriers) rate, fare, or charge for foreign air transportation or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder the Board is empowered, upon complaint or upon its own initiative, at once, and, if it so orders, without answer or other formal pleading by the air carrier or foreign air carrier, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, or charge, or such classification, rule, regulation, or practice; and pending such hearing and the decision thereon, the Board, by filing with such tariff, and delivering to the air carrier or foreign air carrier affected thereby, a statement in writing of its reasons for such suspension, may suspend the operation of such tariff and defer the use of such rate, fare, or charge, or such classification, rule, regulation, or practice, for a period or periods not exceeding three hundred and sixty-five days in the aggregate beyond the time when such tariff would otherwise go into effect. If, after hearing, the Board shall be of the opinion that such rate, fare, or charge, or such classification, rule, regulation, or practice, is or will be unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, the Board may take action to reject or cancel such tariff and prevent the use of such rate, fare, or charge, or such classification, rule, regulation, or practice. The Board may at any time rescind the suspension of such tariff and permit the use of such rate, fare, or charge, or such classification, rule, regulation, or practice. If the proceeding has not been concluded and an order made within the period of suspension or suspensions, or if the Board shall otherwise so direct, the proposed rate, fare, charge, classification, rule, regulation, or practice shall go into effect subject, however, to being canceled when the proceeding is concluded. This paragraph shall not apply to any initial tariff filed by an air carrier or foreign air carrier. During the period of any suspension or suspensions, or following rejection or cancellation of a tariff, including tariffs which have gone into effect provisionally, the affected air carrier or foreign air carrier shall maintain in effect and use the rate, fare, or charge, or the classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of service thereunder, which was in effect immediately prior to the filing of the new tariff.

(2) With respect to any existing tariff of an air carrier or foreign air carrier stating rates, fares, or charges for foreign air transportation, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the Board is empowered, upon complaint or upon its own initiative, at once and, if it so orders, without answer or other formal pleading by the air carrier or foreign air carrier, but upon reasonable notice, to enter into a hearing concerning the lawfulness of such rate, fare, or charge, or such classification, rule, regulation, or practice; and pending such hearing and the decision thereon, the Board, upon reasonable notice, and by filing with such tariff, and delivering to the air carrier or foreign air carrier affected thereby, a statement in writing of its reasons for such suspension, and the effective date thereof, may suspend the operation of such tariff and defer the use of such rate, fare, or charge, or such classification, rule, regulation, or practice, following the effective date of such suspension, for a period or periods not exceeding three hundred and sixty-five days in the aggregate from the effective date of such suspension. If, after hearing, the Board shall be of the opinion that such rate, fare, or charge, or such classification, rule, regulation, or practice, is or will be unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, the Board may take action to cancel such tariff and prevent the use of such rate, fare, or charge, or

such classification, rule, regulation, or practice. If the proceeding has not been concluded within the period of suspension or suspensions, the tariff shall again go into effect subject, however, to being canceled when the proceeding is concluded. For the purposes of operation during the period of such suspension, or the period following cancellation of an existing tariff pending effectiveness of a new tariff, the air carrier or foreign air carrier may file a tariff embodying any rate, fare, or charge, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, that may be currently in effect (and not subject to a suspension order) for any air carrier engaged in the same foreign air transportation.

(3) Whenever the Board finds that the government or aeronautical authorities of any foreign country have refused to permit the charging of rates, fares, or charges contained in a properly filed and published tariff of an air carrier filed under this chapter for foreign air transportation to such foreign country, the Board may, without hearing, (A) suspend the operation of any existing tariff of any foreign air carrier providing services between the United States and such foreign country for a period or periods not exceeding three hundred and sixty-five days in the aggregate from the date of such suspension, and (B) during the period of such suspension or suspensions, order the foreign air carrier to charge rate, fares, or charges which are the same as those contained in a properly filed and published tariff (designated by the Board) of an air carrier filed under this chapter for foreign air transportation to such foreign country, and the effective right of an air carrier to start or continue service at the designated rates, fares, or charges to such foreign country shall be a condition to the continuation of service by the foreign air carrier in foreign air transportation to such foreign country.

(4) The provisions of this subsection and compliance with any order of the Board issued pursuant thereto shall be an express condition to the certificates or permits now held or hereafter issued to any air carrier or foreign air carrier, and the maintenance of rates, fares, or charges in conformity with the requirements of such provisions and such order of the Board shall be a condition to the continuation of the affected service by such air carrier or foreign air carrier.

(5) In exercising and performing its powers and duties under this subsection with respect to the rejection or cancellation of rates for the carriage of persons or property, the Board shall take into consideration, among other factors—

(A) the effect of such rates upon the movement of traffic;

(B) the need in the public interest of adequate and efficient transportation of persons and property by air carriers and foreign air carriers at the lowest cost consistent with the furnishing of such service;

(C) such standards respecting the character and quality of service to be rendered by air carriers and foreign air carriers as may be prescribed by or pursuant to law;

(D) the inherent advantages of transportation by aircraft;

(E) the need of such air carrier and foreign air carrier for revenue sufficient to enable such air carrier and foreign air carrier, under honest, economical, and efficient management, to provide adequate and efficient air carrier and foreign air carrier service; and

(F) whether such rates will be predatory or tend to monopolize competition among air carriers and foreign air carriers in foreign air transportation.

(Pub. L. 85-726, title X, § 1002, Aug. 23, 1958, 72 Stat. 788; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937; Pub. L. 92-259, § 3(a), Mar. 22, 1972, 86 Stat. 96.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), and (c), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

AMENDMENTS

1972—Subsec. (j). Pub. L. 92-259 added subsec. (j).

TRANSFER OF FUNCTIONS

In subsecs. (a), (b), and (c), "Secretary of Transportation" was substituted for "Administrator" (meaning Administrator of the Federal Aviation Agency) pursuant to Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator thereof under this section to the Secretary of Transportation. See section 1655(c)(1) of this title.

INTERNATIONAL AGREEMENTS

Section 4 of Pub. L. 92-259 provided that: "The amendments made by this Act [adding subsec. (j) of this section and sections 1374(a)(2) and 1461(b) of this title] shall not be deemed to authorize any actions inconsistent with the provision of section 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1502)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1461, 1471 of this title.

§ 1483. Joint Boards

(a) Designation

The Board and the Interstate Commerce Commission shall direct their respective chairmen to designate, from time to time, a like number of members of each to act as a joint board to consider and pass upon matters referred to such board as provided in subsection (c) of this section.

(b) Through service and joint rates

Air carriers may establish reasonable through service and joint rates, fares, and charges with other common carriers; except that with respect to transportation of property, air carriers not directly engaged in the operation of aircraft in air transportation (other than companies engaged in the air express business) may not establish joint rates or charges, under the provisions of this subsection, with common carriers subject to the Interstate Commerce Act. In case of through service by air carriers and common carriers subject to the Interstate Commerce Act, it shall be the duty of the carriers parties thereto to establish just and reasonable

rates, fares, or charges and just and reasonable classifications, rules, regulations, and practices affecting such rates, fares, or charges, or the value of the service thereunder, and if joint rates, fares, or charges shall have been established with respect to such through service, just, reasonable, and equitable divisions of such joint rates, fares, or charges as between the carriers participating therein. Any air carrier, and any common carrier subject to the Interstate Commerce Act, which is participating in such through service and joint rates, fares, or charges, shall include in its tariffs, filed with the Civil Aeronautics Board or the Interstate Commerce Commission, as the case may be, a statement showing such through service and joint rates, fares, or charges.

(c) Jurisdiction of Boards

Matters relating to such through service and joint rates, fares, or charges may be referred by the Board or the Interstate Commerce Commission, upon complaint or upon its own initiative, to a joint board created as provided in subsection (a) of this section. Complaints may be made to the Interstate Commerce Commission or the Board with respect to any matter which may be referred to a joint board under this subsection.

(d) Power of Boards

With respect to matters referred to any joint board as provided in subsection (c) of this section, if such board finds, after notice and hearing, that any such joint rate, fare, or charge, or classification, rule, regulation, or practice, affecting such joint rate, fare, or charge or the value of the service thereunder is or will be unjust, unreasonable, unjustly discriminatory, or unduly preferential or prejudicial, or that any division of any such joint rate, fare, or charge, is or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto, it is authorized and directed to take the same action with respect thereto as the Board is empowered to take with respect to any joint rate, fare, or charge, between air carriers, or any divisions thereof, or any classification, rule, regulation, or practice affecting such joint rate, fare, or charge or the value of the service thereunder.

(e) Judicial enforcement and review of orders

Orders of the joint boards shall be enforceable and reviewable as provided in this chapter with respect to orders of the Board.

(Pub. L. 85–726, title X, § 1003, Aug. 23, 1958, 72 Stat. 791.)

REFERENCES IN TEXT

The Interstate Commerce Act, referred to in subsec. (b), is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, which is classified generally to chapters 1, 8, 12, 13, and 19 (§§ 1 et seq., 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

§ 1484. Evidence

(a) Power to take evidence

Any member or examiner of the Board, when duly designated by the Board for such purpose, may hold hearings, sign and issue subpenas, administer oaths, examine witnesses, and receive evidence at any place in the United States designated by the Board. In all cases heard by an examiner or a single member the Board shall hear or receive argument on request of either party.

(b) Issuance of subpenas; witness fees

For the purposes of this chapter the Board shall have the power to require by subpena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation. Witnesses summoned before the Board shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(c) Enforcement of subpenas

The attendance of witnesses, and the production of books, papers, and documents, may be required from any place in the United States, at any designated place of hearing. In case of disobedience to a subpena, the Board, or any party to a proceeding before the Board, may invoke the aid of any court of the United States in requiring attendance and testimony of witnesses and the production of such books, papers, and documents under the provisions of this section.

(d) Contempt

Any court of the United States within the jurisdiction of which an inquiry is carried on may, in case of contumacy or refusal to obey a subpena issued to any person, issue an order requiring such person to appear before the Board (and produce books, papers, or documents if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) Depositions

The Board may order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Board and having power to administer oaths. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Board, as hereinbefore provided.

(f) Method of taking depositions

Every person deposing as herein provided shall be cautioned and shall be required to swear (or affirm, if he so requests) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent. All depositions shall be promptly filed with the Board.

(g) Foreign depositions

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken, provided the laws of the foreign country so permit, by a consular officer or other person commissioned by the Board, or agreed upon by the parties by stipulation in writing to be filed with the Board, or may be taken under letters rogatory issued by a court of competent jurisdiction at the request of the Board.

(h) Fees in connection with depositions

Witnesses whose depositions are taken as authorized in this chapter, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States: *Provided,* That with respect to commissions or letters rogatory issued at the initiative of the Board, executed in foreign countries, the Board shall pay such fees, charges, or expenses incidental thereto as may be found necessary, in accordance with regulations on the subject to be prescribed by the Board.

(Pub. L. 85-726, title X, § 1004, Aug. 23, 1958, 72 Stat. 792; Pub. L. 91-452, title II, § 246, Oct. 15, 1970, 84 Stat. 931.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

AMENDMENTS

1970—Subsec. (i). Pub. L. 91-452 struck out subsec. (i) which related to the immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISIONS

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

CROSS REFERENCES

Immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1354 of this title.

§ 1485. Orders, notices, and service

(a) Effective date of orders; emergency orders

Except as otherwise provided in this chapter, all orders, rules, and regulations of the Board or the Secretary of Transportation shall take effect within such reasonable time as the Board or Secretary of Transportation may prescribe, and shall continue in force until their further order, rule, or regulation, or for a specified period of time, as shall be prescribed in the order, rule, or regulation: *Provided,* That whenever the Secretary of Transportation is of the opinion that an emergency requiring immediate action exists in respect of safety in air commerce, the Secretary of Transportation is authorized, either upon complaint or his own initiative without complaint, at once, if he so orders, without answer or other form of pleading by the interested person or persons, and with or without notice, hearing, or the making or filing of a report, to make such just and reasonable orders, rules, or regulations, as may be essential in the interest of safety in air commerce to meet such emergency: *Provided further,* That the Secretary of Transportation shall immediately initiate proceedings relating to the matters embraced in any such order, rule, or regulation, and shall, insofar as practicable, give preference to such proceedings over all others under this chapter.

(b) Designation of agent for service

It shall be the duty of every air carrier and foreign air carrier to designate in writing an agent upon whom service of all notices and process and all orders, decisions, and requirements of the Board and the Secretary of Transportation may be made for and on behalf of said carrier, and to file such designation with the Secretary of Transportation and in the office of the secretary of the Board, which designation may from time to time be changed by like writing similarly filed. Service of all notices and process and orders, decisions, and requirements of the Secretary of Transportation or the Board may be made upon such carrier by service upon such designated agent at his office or usual place of residence with like effect as if made personally upon such carrier, and in default of such designation of such agent, service of any notice or other process in any proceedings before said Secretary of Transportation or Board or of any order, decision, or requirements of the Secretary of Transportation or Board, may be made by posting such notice, process, order, requirement, or decision in the office of the Secretary of Transportation or with the secretary of the Board.

(c) Manner of service

Service of notices, processes, orders, rules, and regulations upon any person may be made by personal service, or upon an agent designated in writing for the purpose, or by registered or certified mail addressed to such person or agent. Whenever service is made by registered or certified mail, the date of mailing shall be considered as the time when service is made.

(d) Suspension or modification of orders

Except as otherwise provided in this chapter, the Secretary of Transportation or the Board is empowered to suspend or modify their orders upon such notice and in such manner as they shall deem proper.

(e) Compliance with orders

It shall be the duty of every person subject to this chapter, and its agents and employees, to observe and comply with any order, rule, regulation, or certificate issued by the Secretary of

Transportation or the Board under this chapter affecting such person so long as the same shall remain in effect.

(f) Findings of fact; service of orders

Every order of the Secretary of Transportation or the Board shall set forth the findings of fact upon which it is based, and shall be served upon the parties to the proceeding and the persons affected by such order.

(Pub. L. 85-726, title X, § 1005, Aug. 23, 1958, 72 Stat. 794; Pub. L. 86-199, Aug. 25, 1959, 73 Stat. 427; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (d), and (e), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

AMENDMENTS

1959—Subsec. (c). Pub. L. 86-199 authorized service by certified mail.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted, in subsecs. (a), (b), and (d) to (f), for "Administrator" (meaning Administrator of the Federal Aviation Agency) pursuant to Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator thereof under this section to the Secretary of Transportation. See section 1655(c)(1) of this title.

§ 1486. Judicial review

(a) Orders subject to review; petition for review

Any order, affirmative or negative, issued by the Board or Secretary of Transportation under this chapter, except any order in respect of any foreign air carrier subject to the approval of the President as provided in section 1461 of this title, shall be subject to review by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore.

(b) Venue

A petition under this section shall be filed in the court for the circuit wherein the petitioner resides or has his principal place of business or in the United States Court of Appeals for the District of Columbia.

(c) Notice to Board or Secretary of Transportation; filing of record

A copy of the petition shall, upon filing, be forthwith transmitted to the Board or Secretary of Transportation by the clerk of the court, and the Board or Secretary of Transportation shall thereupon file in the court the record, if any, upon which the order complained of was entered, as provided in section 2112 of title 28.

(d) Power of court

Upon transmittal of the petition to the Board or Secretary of Transportation, the court shall have exclusive jurisdiction to affirm, modify, or set aside the order complained of, in whole or in part, and if need be, to order further proceedings by the Board or Secretary of Transportation. Upon good cause shown and after reasonable notice to the Board or Secretary of Transportation interlocutory relief may be granted by stay of the order or by such mandatory or other relief as may be appropriate.

(e) Conclusiveness of findings of fact; objections

The findings of facts by the Board or Secretary of Transportation, if supported by substantial evidence, shall be conclusive. No objection to an order of the Board or Secretary of Transportation shall be considered by the court unless such objection shall have been urged before the Board or Secretary of Transportation or, if it was not so urged, unless there were reasonable grounds for failure to do so.

(f) Review by Supreme Court

The judgment and decree of the court affirming, modifying, or setting aside any such order of the Board or Secretary of Transportation shall be subject only to review by the Supreme Court of the United States upon certification or certiorari as provided in section 1254 of title 28.

(Pub. L. 85-726, title X, § 1006, Aug. 23, 1958, 72 Stat. 795; Pub. L. 86-546, § 1, June 29, 1960, 74 Stat. 255; Pub. L. 87-225, § 2, Sept. 13, 1961, 75 Stat. 497; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

AMENDMENTS

1961—Subsec. (d). Pub. L. 87-225 substituted a requirement of reasonable notice to the Board or Administrator for provisions which required five days' notice.

1960—Subsec. (c). Pub. L. 86-546 substituted "shall thereupon file in the court the record, if any, upon which the order complained of was entered, as provided in section 2112 of Title 28" for "shall thereupon certify and file in the court a transcript of the record, if any, upon which the order complained of was entered".

TRANSFER OF FUNCTIONS

In subsecs. (a), (c), (d), (e), and (f), "Secretary of Transportation" was substituted for "Administrator" (meaning Administrator of the Federal Aviation Agency) pursuant to Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator thereof under this section to the Secretary of Transportation. See section 1655(c)(1) of this title.

NOTICE TO BOARD OR ADMINISTRATOR; FILING OF RECORD

Section 1006(c) of act June 23, 1938, ch. 601, title X, 52 Stat. 1024, was amended by Pub. L. 85-791, § 18, Aug. 28, 1958, 72 Stat. 947, to read as follows: "(c) A copy of the petition shall, upon filing, be forthwith transmitted to the Board by the clerk of the court;

and the Board shall thereupon file in the court the record, if any, upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1429 of this title.

§ 1487. Judicial enforcement; jurisdiction; application; costs

(a) If any person violates any provision of this chapter, or any rule, regulation, requirement, or order thereunder, or any term, condition, or limitation of any certificate or permit issued under this chapter, the Board or Secretary of Transportation, as the case may be, their duly authorized agents, or, in the case of a violation of section 1514 of this title, the Attorney General, or, in the case of a violation of section 1371(a) of this title, any party in interest, may apply to the district court of the United States, for any district wherein such person carries on his business or wherein the violation occurred, for the enforcement of such provision of this chapter, or of such rule, regulation, requirement, order, term, condition, or limitation; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or other process, mandatory or otherwise, restraining such person, his officers, agents, employees, and representatives from further violation of such provision of this chapter or of such rule regulation, requirement, order, term, condition or limitation, and requiring their obedience thereto.

(b) Upon the request of the Board or Secretary of Transportation, any district attorney of the United States to whom the Board or Secretary of Transportation may apply is authorized to institute in the proper court and to prosecute under the direction of the Attorney General all necessary proceedings for the enforcement of the provisions of this chapter or any rule, regulation, requirement, or order thereunder, or any term, condition, or limitation of any certificate or permit, and for the punishment of all violations thereof, and the costs and expenses of such prosecutions shall be paid out of the appropriations for the expenses of the courts of the United States.

(Pub. L. 85-726, title X, § 1007, Aug. 23, 1958, 72 Stat. 796; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937; Pub. L. 93-366, title I, § 108, Aug. 5, 1974, 88 Stat. 414.)

REFERENCES IN TEXT

This chapter, referred to in text, read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-366 added provision relating to the enforcement authority of the Attorney General in the case of a violation under section 1514 of this title.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted in text for "Administrator" (meaning Administrator of the Federal Aviation Agency) pursuant to Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator thereof under this section to the Secretary of Transportation. See section 1655(c)(1) of this title.

§ 1488. Participation by Board or Secretary of Transportation in court proceedings

Upon request of the Attorney General, the Board or Secretary of Transportation, as the case may be, shall have the right to participate in any proceeding in court under the provisions of this chapter.

(Pub. L. 85-726, title X, § 1008, Aug. 23, 1958, 72 Stat. 796; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

REFERENCES IN TEXT

This chapter, referred to in text, read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Administrator" (meaning Administrator of the Federal Aviation Agency) pursuant to Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator thereof under this section to the Secretary of Transportation. See section 1655(c)(1) of this title.

§ 1489. Joinder of parties; intervention

In any proceeding for the enforcement of the provisions of this chapter, or any rule, regulation, requirement, or order thereunder, or any term, condition, or limitation of any certificate or permit, whether such proceedings be instituted before the Board or be begun originally in any court of the United States, it shall be lawful to include as parties, or to permit the intervention of, all persons interested in or affected by the matter under consideration; and inquiries, investigations, orders, and decrees may be made with reference to all such parties in the same manner, to the same extent, and subject to the same provisions of law as they may be made with respect to the persons primarily concerned.

(Pub. L. 85-726, title X, § 1009, Aug. 23, 1958, 72 Stat. 796.)

REFERENCES IN TEXT

This chapter, referred to in text, read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

SUBCHAPTER XI—MISCELLANEOUS

§ 1501. Hazards to air commerce

The Secretary of Transportation shall, by rules and regulations, or by order where necessary, require all persons to give adequate public notice, in the form and manner prescribed by the Secretary of Transportation, of the construction or alteration, or of the proposed construction or alteration, of any structure where notice will promote safety in air commerce.

(Pub. L. 85-726, title XI, § 1101, Aug. 23, 1958, 72 Stat. 797; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

EFFECTIVE DATE

Subchapter effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now the Federal Aviation Administration] first appointed under this chapter qualifies and takes office, see section 1505(2) of Pub. L. 85-726, set out as a note under section 1301 of this title. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under this section to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1655 of this title.

§ 1502. International agreements

In exercising and performing their powers and duties under this chapter, the Board and the Secretary of Transportation shall do so consistently with any obligation assumed by the United States in any treaty, convention, or agreement that may be in force between the United States and any foreign country or foreign countries, and shall take into consideration any applicable laws and requirements of foreign countries and the Board shall not, in exercising and performing its powers and duties with respect to certificates of convenience and necessity, restrict compliance by any air carrier with any obligation, duty, or liability imposed by any foreign country: *Provided*, That this section shall not apply to any obligation, duty, or liability arising out of a contract or other agreement, heretofore or hereafter entered into between an air carrier, or any officer or representative thereof, and any foreign country, if such contract or agreement is disapproved by the Board as being contrary to the public interest.

(Pub. L. 85-726, title XI, § 1102, Aug. 23, 1958, 72 Stat. 797; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

REFERENCES IN TEXT

This chapter, referred to in text, read in the original "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Administrator" (meaning Administrator of the Federal Aviation Agency) pursuant to Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator thereof under this section to the Secretary of Transportation. See section 1655(c)(1) of this title.

WARSAW CONVENTION

49 Stat. 3000; TS 876

CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL TRANSPORTATION BY AIR

THE PRESIDENT OF THE GERMAN REICH, THE FEDERAL PRESIDENT OF THE REPUBLIC OF AUSTRIA, HIS MAJESTY THE KING OF THE BELGIANS, THE PRESIDENT OF THE UNITED STATES OF BRAZIL, HIS MAJESTY THE KING OF THE BULGARIANS, THE PRESIDENT OF THE NATIONALIST GOVERNMENT OF CHINA, HIS MAJESTY THE KING OF DENMARK AND ICELAND, HIS MAJESTY THE KING OF EGYPT, HIS MAJESTY THE KING OF SPAIN, THE CHIEF OF STATE OF THE REPUBLIC OF ESTONIA, THE PRESIDENT OF THE REPUBLIC OF FINLAND, THE PRESIDENT OF THE FRENCH REPUBLIC, HIS MAJESTY THE KING OF GREAT BRITAIN, IRELAND, AND THE BRITISH DOMINIONS BEYOND THE SEAS, EMPEROR OF INDIA, THE PRESIDENT OF THE HELLENIC REPUBLIC, HIS MOST SERENE HIGHNESS THE REGENT OF THE KINGDOM OF HUNGARY, HIS MAJESTY THE KING OF ITALY, HIS MAJESTY THE EMPEROR OF JAPAN, THE PRESIDENT OF THE REPUBLIC OF LATVIA, HER ROYAL HIGHNESS THE GRAND DUCHESS OF LUXEMBURG, THE PRESIDENT OF THE UNITED MEXICAN STATES, HIS MAJESTY THE KING OF NORWAY, HER MAJESTY THE QUEEN OF THE NETHERLANDS, THE PRESIDENT OF THE REPUBLIC OF POLAND, HIS MAJESTY THE KING OF RUMANIA, HIS MAJESTY THE KING OF SWEDEN, THE SWISS FEDERAL COUNCIL, THE PRESIDENT OF THE CZECHOSLOVAK REPUBLIC, THE CENTRAL EXECUTIVE COMMITTEE OF THE UNION OF SOVIET SOCIALIST REPUBLICS, THE PRESIDENT OF THE UNITED STATES OF VENEZUELA, HIS MAJESTY THE KING OF YUGOSLAVIA:

Having recognized the advantage of regulating in a uniform manner the conditions of international transportation by air in respect of the documents used for such transportation and of the liability of the carrier,

Have nominated to this end their respective Plenipotentiaries, who being thereto duly authorized, have concluded and signed the following convention:

CHAPTER I—SCOPE—DEFINITIONS

Article 1

(1) This convention shall apply to all international transportation of persons, baggage, or goods performed by aircraft for hire. It shall apply equally to gratuitous transportation by aircraft performed by an air transportation enterprise.

(2) For the purpose of this convention the expression "international transportation" shall mean any transportation in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the transportation or a transshipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another power, even though that power is not a party to this convention. Transportation without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate, or authority of the same High Contracting Party shall not be deemed to be international for the purposes of this convention.

(3) Transportation to be performed by several successive air carriers shall be deemed, for the purposes of this convention, to be one undivided transportation, if it has been regarded by the parties as a single operation, whether it has been agreed upon under the form of a single contract or of a series of contracts, and it shall not lose its international character merely because one contract or series of contracts is to be performed entirely within a territory subject to the sovereignty, suzerainty, mandate, or authority of the same High Contracting Party.

Article 2

(1) This convention shall apply to transportation performed by the state or by legal entities constituted under public law provided it falls within the conditions laid down in article 1.

(2) This convention shall not apply to transportation performed under the terms of any international postal convention.

CHAPTER II—TRANSPORTATION DOCUMENTS

SECTION I—PASSENGER TICKET

Article 3

(1) For the transportation of passengers the carrier must deliver a passenger ticket which shall contain the following particulars:

(*a*) The place and date of issue;

(*b*) The place of departure and of destination;

(*c*) The agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right, the alteration shall not have the effect of depriving the transportation of its international character;

(*d*) The name and address of the carrier or carriers;

(*e*) A statement that the transportation is subject to the rules relating to liability established by this convention.

(2) The absence, irregularity, or loss of the passenger ticket shall not affect the existence or the validity of the contract of transportation, which shall none the less be subject to the rules of this convention. Nevertheless, if the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions of this convention which exclude or limit his liability.

SECTION II—BAGGAGE CHECK

Article 4

(1) For the transportation of baggage, other than small personal objects of which the passenger takes charge himself, the carrier must deliver a baggage check.

(2) The baggage check shall be made out in duplicate, one part for the passenger and the other part for the carrier.

(3) The baggage check shall contain the following particulars:

(*a*) The place and date of issue;

(*b*) The place of departure and of destination;

(*c*) The name and address of the carrier or carriers;

(*d*) The number of the passenger ticket;

(*e*) A statement that delivery of the baggage will be made to the bearer of the baggage check;

(*f*) The number and weight of the packages;

(*g*) The amount of the value declared in accordance with article 22(2);

(*h*) A statement that the transportation is subject to the rules relating to liability established by this convention.

(4) The absence, irregularity, or loss of the baggage check shall not affect the existence or the validity of the contract of transportation which shall none the less be subject to the rules of this convention. Nevertheless, if the carrier accepts baggage without a baggage check having been delivered, or if the baggage check does not contain the particulars set out at (*d*), (*f*), and (*h*) above, the carrier shall not be entitled to avail himself of those provisions of the convention which exclude or limit his liability.

SECTION III—AIR WAYBILL

Article 5

(1) Every carrier of goods has the right to require the consignor to make out and hand over to him a document called an "air waybill"; every consignor has the right to require the carrier to accept this document.

(2) The absence, irregularity, or loss of this document shall not affect the existence or the validity of the contract of transportation which shall, subject to the provisions of article 9, be none the less governed by the rules of this convention.

Article 6

(1) The air waybill shall be made out by the consignor in three original parts and be handed over with the goods.

(2) The first part shall be marked "for the carrier", and shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier and shall accompany the goods. The third part shall be signed by the carrier and handed by him to the consignor after the goods have been accepted.

(3) The carrier shall sign on acceptance of the goods.

(4) The signature of the carrier may be stamped; that of the consignor may be printed or stamped.

(5) If, at the request of the consignor, the carrier makes out the air waybill, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 7

The carrier of goods has the right to require the consignor to make out separate waybills when there is more than package.

Article 8

The air waybill shall contain the following particulars:

(*a*) The place and date of its execution;

(*b*) The place of departure and of destination;

(*c*) The agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right the alteration shall not have the effect of depriving the transportation of its international character;

(*d*) The name and address of the consignor;

(*e*) The name and address of the first carrier;

(*f*) The name and address of the consignee, if the case so requires;

(*g*) The nature of the goods;

(*h*) The number of packages, the method of packing, and the particular marks or numbers upon them;

(*i*) The weight, the quantity, the volume, or dimensions of the goods;

(*j*) The apparent condition of the goods and of the packing;

(*k*) The freight, if it has been agreed upon, the date and place of payment, and the person who is to pay it;

(*l*) If the goods are sent for payment on delivery, the price of the goods, and, if the case so requires, the amount of the expenses incurred;

(*m*) The amount of the value declared in accordance with article 22(2);

(*n*) The number of parts of the air waybill;

(*o*) The documents handed to the carrier to accompany the air waybill;

(*p*) The time fixed for the completion of the transportation and a brief note of the route to be followed, of these matters have been agreed upon;

(*q*) A statement that the transportation is subject to the rules relating to liability established by this convention.

Article 9

If the carrier accepts goods without an air waybill having been made out, or if the air waybill does not contain all the particulars set out in article 8(*a*) to (*i*), inclusive, and (*q*), the carrier shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability.

Article 10

(1) The consignor shall be responsible for the correctness of the particulars and statements relating to the goods which he inserts in the air waybill.

(2) The consignor shall be liable for all damages suffered by the carrier or any other person by reason of

the irregularity, incorrectness or incompleteness of the said particulars and statements.

Article 11

(1) The air waybill shall be *prima facie* evidence of the conclusion of the contract, of the receipt of the goods and of the conditions of transportation.

(2) The statements in the air waybill relating to the weight, dimensions, and packing of the goods, as well as those relating to the number of packages, shall be *prima facie* evidence of the facts stated; those relating to the quantity, volume, and condition of the goods shall not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the goods.

Article 12

(1) Subject to his liability to carry out all his obligations under the contract of transportation, the consignor shall have the right to dispose of the goods by withdrawing them at the airport of departure or destination, or by stopping them in the course of the journey on any landing, or by calling for them to be delivered at the place of destination, or in the course of the journey to a person other than the consignee named in the air waybill, or by requiring them to be returned to the airport of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors, and he must repay any expenses occasioned by the exercise of this right.

(2) If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.

(3) If the carrier obeys the orders of the consignor for the disposition of the goods without requiring the production of the part of the air waybill delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill.

(4) The right conferred on the consignor shall cease at the moment when that of the consignee begins in accordance with article 13, below. Nevertheless, if the consignee declines to accept the waybill or the goods, or if he cannot be communicated with, the consignor shall resume his right of disposition.

Article 13

(1) Except in the circumstances set out in the preceding article, the consignee shall be entitled, on arrival of the goods at the place of destination, to require the carrier to hand over to him the air waybill and to deliver the goods to him, on payment of the charges due and on complying with the conditions of transportation set out in the air waybill.

(2) Unless it is otherwise agreed, it shall be the duty of the carrier to give notice to the consignee as soon as the goods arrive.

(3) If the carrier admits the loss of the goods, or if the goods have not arrived at the expiration of seven days after the date on which they ought to have arrived, the consignee shall be entitled to put into force against the carrier the rights which flow from the contract of transportation.

Article 14

The consignor and the consignee can respectively enforce all the rights given them by articles 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract.

Article 15

(1) Articles 12, 13, and 14 shall not affect either the relations of the consignor and the consignee with each other or the relations of third parties whose rights are derived either from the consignor or from the consignee.

(2) The provisions of articles 12, 13, and 14 can only be varied by express provision in the air waybill.

Article 16

(1) The consignor must furnish such information and attach to the air waybill such documents as are necessary to meet the formalities of customs, octroi, or police before the goods can be delivered to the consignee. The consignor shall be liable to the carrier for any damage occasioned by the absence, insufficiency, or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his agents.

(2) The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

CHAPTER III—LIABILITY OF THE CARRIER

Article 17

The carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Article 18

(1) The carrier shall be liable for damage sustained in the event of the destruction or loss of, or of damage to, any checked baggage or any goods, if the occurrence which caused the damage so sustained took place during the transportation by air.

(2) The transportation by air within the meaning of the preceding paragraph shall comprise the period during which the baggage or goods are in charge of the carrier, whether in an airport or on board an aircraft, or in the case of a landing outside an airport, in any place whatsoever.

(3) The period of the transportation by air shall not extend to any transportation by land, by sea, or by river performed outside an airport. If, however, such transportation takes place in the performance of a contract for transportation by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the transportation by air.

Article 19

The carrier shall be liable for damage occasioned by delay in the transportation by air of passengers, baggage, or goods.

Article 20

(1) The carrier shall not be liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

(2) In the transportation of goods and baggage the carrier shall not be liable if he proves that the damage was occasioned by an error in piloting, in the handling of the aircraft, or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage.

Article 21

If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

Article 22

(1) In the transportation of passengers the liability of the carrier for each passenger shall be limited to the sum of 125,000 francs. Where, in accordance with the law of the court to which the case is submitted, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 125,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

(2) In the transportation of checked baggage and of goods, the liability of the carrier shall be limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the actual value to the consignor at delivery.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier shall be limited to 5,000 francs per passenger.

(4) The sums mentioned above shall be deemed to refer to the French franc consisting of 65½ milligrams of gold at the standard of fineness of nine hundred thousandths. These sums may be converted into any national currency in round figures.

Article 23

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this convention shall be null and void, but the nullity of any such provision shall not involve the nullity of the whole contract, which shall remain subject to the provisions of this convention.

Article 24

(1) In the cases covered by articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this convention.

(2) In the cases covered by article 17 the provisions of the preceding paragraph shall also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

Article 25

(1) The carrier shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability, if the damage is caused by his willful misconduct or by such default on his part as, in accordance with the law of the court to which the case is submitted, is considered to be equivalent to wilful misconduct.

(2) Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused under the same circumstances by any agent of the carrier acting within the scope of his employment.

Article 26

(1) Receipt by the person entitled to the delivery of baggage or goods without complaint shall be *prima facie* evidence that the same have been delivered in good condition and in accordance with the document of transportation.

(2) In case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within 3 days from the date of receipt in the case of baggage and 7 days from the date of receipt in the case of goods. In case of delay the complaint must be made at the latest within 14 days from the date on which the baggage or goods have been placed at his disposal.

(3) Every complaint must be made in writing upon the document of transportation or by separate notice in writing dispatched within the times aforesaid.

(4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

Article 27

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this convention against those legally representing his estate.

Article 28

(1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court of the domicile of the carrier or of his principal place of business, or where he has a place of business through which the contract has been made, or before the court at the place of destination.

(2) Questions of procedure shall be governed by the law of the court to which the case in submitted.

Article 29

(1) The right to damages shall be extinguished if an action is not brought within 2 years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the transportation stopped.

(2) The method of calculating the period of limitation shall be determined by the law of the court to which the case is submitted.

Article 30

(1) In the case of transportation to be performed by various successive carriers and falling within the definition set out in the third paragraph of article 1, each carrier who accepts passengers, baggage or goods shall be subject to the rules set out in this convention, and shall be deemed to be one of the contracting parties to the contract of transportation insofar as the contract deals with that part of the transportation which is performed under his supervision.

(2) In the case of transportation of this nature, the passenger or his representative can take action only against the carrier who performed the transportation during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

(3) As regards baggage or goods, the passenger or consignor shall have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery shall have a right of action against the last carrier, and further, each may take action against the carrier who performed the transportation during which the destruction, loss, damage, or delay took place. These carriers shall be jointly and severally liable to the passenger or to the consignor or consignee

CHAPTER IV—PROVISIONS RELATING TO COMBINED TRANSPORTATION

Article 31

(1) In the case of combined transportation performed partly by air and partly by any other mode of transportation, the provisions of this convention shall apply only to the transportation by air, provided that the transportation by air falls within the terms of article 1.

(2) Nothing in this convention shall prevent the parties in the case of combined transportation from inserting in the document of air transportation conditions relating to other modes of transportation, provided that the provisions of this convention are observed as regards the transportation by air.

CHAPTER V—GENERAL AND FINAL PROVISIONS

Article 32

Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the transportation of goods arbitration clauses shall be allowed, subject to this convention, if the arbitration is to take place within one of the jurisdictions referred to in the first paragraph of article 28.

Article 33

Nothing contained in this convention shall prevent the carrier either from refusing to enter into any contract of transportation or from making regulations which do not conflict with the provisions of this convention.

Article 34

This convention shall not apply to international transportation by air performed by way of experimental trial by air navigation enterprises with the view to the establishment of regular lines of air navigation, nor shall it apply to transportation performed in extraordinary circumstances outside the normal scope of an air carrier's business.

Article 35

The expression "days" when used in this convention means current days, not working days.

Article 36

This convention is drawn up in French in a single copy which shall remain deposited in the archives of the Ministry for Foreign Affairs of Poland and of which one duly certified copy shall be sent by the Polish Government to the Government of each of the High Contracting Parties.

Article 37

(1) This convention shall be ratified. The instruments of ratification shall be deposited in the archives of the Ministry for Foreign Affairs of Poland, which shall give notice of the deposit to the Government of each of the High Contracting Parties.

(2) As soon as this convention shall have been ratified by five of the High Contracting Parties it shall come into force as between them on the nineteenth day after the deposit of the fifth ratification. Thereafter it shall come into force between the High Contracting Parties which shall have ratified and the High Contracting Party which deposits its instrument of ratification on the ninetieth day after the deposit.

(3) It shall be the duty of the Government of the Republic of Poland to notify the Government of each of the High Contracting Parties of the date on which this convention comes into force as well as the date of the deposit of each ratification.

Article 38

(1) This convention shall, after it has come into force, remain open for adherence by any state.

(2) The adherence shall be effected by a notification addressed to the Government of the Republic of Poland, which shall inform the Government of each of the High Contracting Parties thereof.

(3) The adherence shall take effect as from the ninetieth day after the notification made to the Government of the Republic of Poland.

Article 39

(1) Any one of the High Contracting Parties may denounce this convention by a notification addressed to the Government of the Republic of Poland, which shall at once inform the Government of each of the High Contracting Parties.

(2) Denunciation shall take effect six months after the notification of denunciation, and shall operate only as regards the party which shall have proceeded to denunciation.

Article 40

(1) Any High Contracting Party may, at the time of signature or of deposit of ratification or of adherence, declare that the acceptance which it gives to this convention does not apply to all or any of its colonies, protectorates, territories under mandate, or any other territory subject to its sovereignty or its authority, or any other territory under its suzerainty.

(2) Accordingly any High Contracting Party may subsequently adhere separately in the name of all or any of its colonies, protectorates, territories under mandate, or any other territory subject to its sovereignty or to its authority or any other territory under its suzerainty which have been thus excluded by its original declaration.

(3) Any High Contracting Party may denounce this convention, in accordance with its provisions, separately or for all or any of its colonies, protectorates, territories under mandate, or any other territory subject to its sovereignty or to its authority, or any other territory under its suzerainty.

Article 41

Any High Contracting Party shall be entitled not earlier than two years after the coming into force of this convention to call for the assembling of a new international conference in order to consider any improvements which may be made in this convention. To this end it will communicate with the Government of the French Republic which will take the necessary measures to make preparations for such conference.

This convention, done at Warsaw on October 12, 1929, shall remain open for signature until January 31, 1930.

ORDER OF CIVIL AERONAUTICS BOARD APPROVING INCREASES IN LIABILITY LIMITATIONS OF WARSAW CONVENTION AND HAGUE PROTOCOL

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 13th day of May 1966.

The Convention for the Unification of Certain Rules Relating to International Transportation by Air, generally known as the Warsaw Convention, creates a uniform body of law with respect to the rights and responsibilities of passengers, shippers, and air carriers in international air transportation. The United States became a party to the Convention in 1934, and eventually over 90 countries likewise became parties to the Convention.[1] On November 15, 1965, the U.S. Government gave notice of denunciation of the Convention, emphasizing that such action was solely because of the Convention's low limits of liability for personal injury or death to passengers. Pursuant to Article 39 of the Convention this notice would become effective upon 6 months' notice, in this case, May 15, 1966. Subsequently, the International Air Transport Association (IATA) made efforts to effect an arrangement among air carriers, foreign air carriers, and other carriers (including carriers not members of IATA) providing the major portions of international air carriage to and from the United States to increase the limitations of liability now applicable to claims for personal injury and death under the Convention and the Protocol. The purpose of such action is to provide a basis upon which the United States could withdrawn its notice of denunciation.

The arrangement proposed has been embodied in an agreement (Agreement CAB 18900) between various air carriers, foreign air carriers, and other carriers which has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 [section 1382(a) of this title] and Part 261 of the Board's economic regulations and assigned the abovedesignated CAB number.

By this agreement, the parties thereto bind themselves to include in their tariffs, effective May 16, 1966, a special contract in accordance with Article 22(1) of the Convention or the Protocol providing for a limit of liability for each passenger for death, wounding, or other bodily injury of $75,000 inclusive of legal fees, and, in case of a claim brought in a State

[1] The Convention was amended by the Protocol signed at Hague in 1955 which has never been ratified by the United States. The Convention (subject to certain provisions) limits carriers' liability for death or injury to passengers in international transportation to 125,000 gold francs, or approximately $8,300. The Protocol, subject to certain provisions, provides for liability limitations of approximately $16,600.

where provision is made for separate award of legal fees and costs, a limit of $58,000 exclusive of legal fees and costs. These limitations shall be applicable to international transportation by the carrier as defined in the Convention or Protocol which includes a point in the United States as a point of origin, point of destination, or agreed stopping place. The parties further agree to provide in their tariffs that the Carrier shall not, with respect to any claim arising out of the death, wounding, or other bodily injury of a passenger, avail itself of any defense under Article 20(1) of the Convention or the Convention as amended by the Protocol. The tariff provisions would stipulate, however, that nothing therein shall be deemed to affect the rights and liabilities of the Carrier with regard to any claim brought by, on behalf of, or in respect of any person who has willfully caused damage which results in death, wounding, or other bodily injury of a passenger.

The carriers by the agreement further stipulate that they will, at time of delivery of the tickets, furnish to each passenger governed by the Convention or the Protocol and by the special contract described above, a notice in 10 point type advising international passengers of the limitations of liability established by the Convention or the Protocol, or the higher liability agreed to by the special contracts pursuant to the Convention or Protocol as described above. The agreement is to become effective upon arrival by this Board, and any carrier may become a party to it by signing a counterpart thereof and depositing it with the Board. Withdrawal from the agreement may be effected by giving 12 months' written notice to the Board and the other Carrier parties thereto.

As indicated, the decision of the U.S. Government to serve notice to denounce the Convention was predicated upon the low liability limits therein for personal injury and death. The Government announced, however, that it would be prepared to withdraw the Notice of Denunciation if, prior to its effective date, there is a reasonable prospect for international agreement on limits of liability for international transportation in the area of $100,000 per passenger or on uniform rules without any limit of liability, and if pending such international agreement there is a provisional arrangement among the principal international air carriers providing for liability up to $75,000 per passenger.

Steps, have been taken by the signing carriers to have tariffs become effective May 16, 1966, upon approval of this agreement, which will increase by special contract their liability for personal injury or death as described herein. The signatory carriers provide by far the greater portion of international transportation to, from, and within the United States. The agreement will result in a salutory increase in the protection given to passengers from the increased liability amounts and the waiver of defenses under Article 20(1) of the Convention or Protocol. The U.S. Government has concluded that such arrangements warrant withdrawal of the Notice of Denunciation of the Warsaw Convention. Implementation of the agreement will permit continued adherence to the Convention with the benefits to be derived therefrom, but without the imposition of the low liability limits therein contained upon most international travel involving travel to or from the United States. The stipulation that no tariff provision shall be deemed to affect the rights and liabilities of the carrier with regard to any claim brought by, on behalf of, or in respect of any person who has willfully caused damage which results in death, wounding or other bodily injury of a passenger operates to diminish any incentive for sabotage.

Upon consideration of the agreement, and of matters relating thereto of which the Board takes notice, the Board does not find that the agreement is adverse to the public interest or in violation of the Act and it will be approved.

Accordingly, pursuant to the provisions of the Federal Aviation Act of 1958 [see Short Title note set out under section 1301 of this title], and particularly sections 102, 204(a), and 412 thereof [sections 1302, 1324(a), and 1382 of this title]:

It is ordered, That: 1. Agreement CAB 18900 is approved.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1514 of this title.

§ 1503. Documents as evidence

The copies of tariffs and of all contracts, agreements, understandings, and arrangements filed with the Board as herein provided, and the statistics, tables, and figures contained in the annual or other reports of air carriers and other persons made to the Board as required under the provisions of this chapter shall be preserved as public records (except as otherwise provided in this chapter) in the custody of the secretary of the Board, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Board and in all judicial proceedings; and copies of, and extracts from, any of such tariffs, contracts, agreements, understandings, arrangements, or reports, certified by the secretary of the Board, under the seal of the Board, shall be received in evidence with like effect as the originals.

(Pub. L. 85–726, title XI, § 1103, Aug. 23, 1958, 72 Stat. 797.)

REFERENCES IN TEXT

This chapter, referred to in text, read in the original, "this Act", meaning Pub. L. 85–726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

§ 1504. Public disclosure of information

Any person may make written objection to the public disclosure of information contained in any application, report, or document filed pursuant to the provisions of this chapter or of information obtained by the Board or the Secretary of Transportation, pursuant to the provisions of this chapter, stating the grounds for such objection. Whenever such objection is made, the Board or Secretary of Transportation shall order such information withheld from public disclosure when, in their judgment, a disclosure of such information would adversely affect the interests of such person and is not required in the interest of the public. The Board or Secretary of Transportation shall be responsible for classified information in accordance with appropriate law: *Provided*, That nothing in this section shall authorize the withholding of information by the Board or Secretary of Transportation from the duly authorized committees of the Congress.

(Pub. L. 85–726, title XI, § 1104, Aug. 23, 1958, 72 Stat. 797; Pub. L. 89–670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

REFERENCES IN TEXT

This chapter, referred to in text, read in the original, "this Act", meaning Pub. L. 85–726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Administrator" (meaning Administrator of the Federal Aviation Agency) pursuant to Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator thereof under this section to the Secretary of Transportation. See section 1655(c)(1) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1472 of this title.

§ 1505. Cooperation with government agencies

The Board and the Secretary of Transportation may avail themselves of the assistance of the National Aeronautics and Space Administration and any research or technical agency of the United States on matters relating to aircraft fuel and oil and to the design, materials, workmanship, construction, performance, maintenance, and operation of aircraft, aircraft engines, propellers, appliances, and air navigation facilities. The Board may avail itself of the assistance of the Federal Bureau of Investigation and of any investigatory or intelligence agency of the United States in the investigation of the activities of any person in connection with an aircraft accident. The Board may avail itself of the assistance of any medical agency of the United States in the conduct of such autopsies or tests on the remains of deceased persons aboard the aircraft at the time of the accident, who die as a result of the accident, as may be necessary to aid the Board in the investigation of an aircraft accident. Each such agency is authorized to conduct such scientific and technical researches, investigations, and tests as may be necessary to aid the Board and the Secretary of Transportation in the exercise and performance of their powers and duties. Nothing contained in this chapter shall be construed to authorize the duplication of the laboratory research activities of any existing governmental agency.

(Pub. L. 85-726, title XI, § 1105, Aug. 23, 1958, 72 Stat. 798; Pub. L. 87-810 § 3, Oct. 15, 1962, 76 Stat. 921; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

REFERENCES IN TEXT

This chapter, referred to in text, read in the original "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

AMENDMENTS

1962—Pub. L. 87-810 authorized the Board to avail itself of the assistance of the Federal Bureau of Investigation, any investigatory or intelligence agency of the United States and any medical agency of the United States.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under this section to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1655 of this title.

§ 1506. Remedies not exclusive

Nothing contained in this chapter shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies.

(Pub. L. 85-726, title XI, § 1106, Aug. 23, 1958, 72 Stat. 798.)

REFERENCES IN TEXT

This chapter, referred to in text, read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

§ 1507. Public use of facilities; emergency sale of equipment, supplies and services

(a) Air navigation facilities owned or operated by the United States may be made available for public use under such conditions and to such extent as the head of the department or other agency having jurisdiction thereof deems advisable and may by regulation prescribe.

(b) The head of any Government department or other agency having jurisdiction over any airport or emergency landing field owned or operated by the United States may provide for the sale to any aircraft of fuel, oil, equipment, and supplies, and the furnishing to it of mechanical service, temporary shelter, and other assistance under such regulations as the head of the department or agency may prescribe, but only if such action is by reason of an emergency necessary to the continuance of such aircraft on its course to the nearest airport operated by private enterprise. All such articles shall be sold and such assistance furnished at the fair market value prevailing locally as ascertained by the head of such department or agency. All amounts received under this subsection shall be covered into the Treasury; but that part of such amounts which, in the judgment of the head of the department or agency, is equivalent to the cost of the fuel, oil, equipment, supplies, services, shelter, or other assistance so sold or furnished shall be credited to the appropriation from which such cost was paid, and the balance, if any, shall be credited to miscellaneous receipts.

(Pub. L. 85-726, title XI, § 1107, Aug. 23, 1958, 72 Stat. 798.)

§ 1508. Declaration of national sovereignty in air space; operation of foreign aircraft

(a) The United States of America is declared to possess and exercise complete and exclusive national sovereignty in the airspace of the United States, including the airspace above all inland waters and the airspace above those por-

tions of the adjacent marginal high seas, bays, and lakes, over which by international law or treaty or convention the United States exercises national jurisdiction. Aircraft of the armed forces of any foreign nation shall not be navigated in the United States, including the Canal Zone, except in accordance with an authorization granted by the Secretary of State.

(b) Foreign aircraft, which are not a part of the armed forces of a foreign nation, may be navigated in the United States by airmen holding certificates or licenses issued or rendered valid by the United States or by the nation in which the aircraft is registered if such foreign nation grants a similar privilege with respect to aircraft of the United States and only if such navigation is authorized by permit, order, or regulation issued by the Board hereunder, and in accordance with the terms, conditions, and limitations thereof. The Board shall issue such permits, orders, or regulations to such extent only as it shall find such action to be in the interest of the public: *Provided, however,* That in exercising its powers hereunder, the Board shall do so consistently with any treaty, convention, or agreement which may be in force between the United States and any foreign country or countries. Foreign civil aircraft permitted to navigate in the United States under this subsection may be authorized by the Board to engage in air commerce within the United States except that they shall not take on at any point within the United States, persons, property, or mail carried for compensation or hire and destined for another point within the United States. Nothing contained in this subsection shall be deemed to limit, modify, or amend section 1372 of this title, but any foreign air carrier holding a permit under said section shall not be required to obtain additional authorization under this subsection with respect to any operation authorized by said permit.

(Pub. L. 85-726, title XI, § 1108, Aug. 23, 1958, 72 Stat. 798.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1401 of this title.

§ 1509. Application of existing laws relating to foreign commerce

(a) Navigation and shipping

Except as specifically provided in sections 143 to 147d of title 33, the navigation and shipping laws of the United States, including any definition of "vessel" or "vehicle" found therein and including the rules for the prevention of collisions, shall not be construed to apply to seaplanes or other aircraft or to the navigation of vessels in relation to seaplanes or other aircraft.

(b) Ports of entry for civil aircraft

The Secretary of the Treasury is authorized to (1) designate places in the United States as ports of entry for civil aircraft arriving in the United States from any place outside thereof and for merchandise carried on such aircraft, (2) detail to ports of entry for civil aircraft such officers and employees of the customs service as he may deem necessary, and to confer or impose upon any officer or employee of the United States stationed at any such port of entry (with the consent of the head of the Government department or other agency under whose jurisdiction the officer or employee is serving) any of the powers, privileges, or duties conferred or imposed upon officers or employees of the customs service, and (3) by regulation to provide for the application to civil air navigation of the laws and regulations relating to the administration of the customs laws to such extent and upon such conditions as he deems necessary.

(c) Entry and clearance of vessels

The Secretary of the Treasury is authorized by regulation to provide for the application to civil aircraft of the laws and regulations relating to the entry and clearance of vessels to such extent and upon such conditions as he deems necessary.

(d) Animal and plant quarantine

The Secretary of Agriculture is authorized by regulation to provide for the application to civil air navigation of the laws and regulations related to animal and plant quarantine, including the importation, exportation, transportation, and quarantine of animals, plants, animal and plant products, insects, bacterial and fungus cultures, viruses, and serums, to such extent and upon such conditions as he deems necessary.

(e) Appropriations; acquisition of space by Administrator of General Services

There are authorized to be appropriated such sums as may be necessary to enable the head of any department or agency of the Federal Government charged with any duty of inspection, clearance, collection of taxes or duties, or other similar function, with respect to persons or property moving in air commerce, to acquire such space at public airports (as defined in the Airport and Airway Development Act of 1970) as he determines, after consultation with the Secretary of Transportation, to be necessary for the performance of such duty. In acquiring any such space, the head of such department or agency shall act through the Administrator of General Services in accordance with the procedures established by law which are generally applicable to the acquisition of space to be used by departments and agencies of the Federal Government.

(Pub. L. 85-726, title XI, § 1109, Aug. 23, 1958, 72 Stat. 799; Pub. L. 87-255, § 9, Sept. 20, 1961, 75 Stat. 527; Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937; Pub. L. 91-258, title I, § 52(b)(4)(B), May 21, 1970, 84 Stat. 235.)

REFERENCES IN TEXT

The navigation and shipping laws of the United States, referred to in subsec. (a), are classified generally to Title 33, Navigation and Navigable Waters, and to Title 46, Shipping, respectively.

Sections 143 to 147d of title 33, referred to in subsec. (a), were repealed by Pub. L. 88-131, § 3, Sept. 24, 1963, 77 Stat. 194. See section 1051 et seq. of Title 33, Navigation and Navigable Waters.

The customs laws, referred to in subsec. (b), are classified generally to Title 19, Customs Duties.

The Airport and Airway Development Act of 1970, referred to in subsec. (e), is Pub. L. 91-258, title I, May 21, 1970, 84 Stat. 219, as amended, and is classified principally to chapter 25 (§ 1701 et seq.) of this title.

The definition of public airport appears in section 1711(15) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables volume.

AMENDMENTS

1970—Subsec. (e). Pub. L. 91-258 substituted "Airport and Airway Development Act of 1970" for "Federal Airport Act".

1961—Subsec. (e). Pub. L. 87-255 added subsec. (e).

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-255 inapplicable to projects for which amounts have been obligated by execution of grant agreements before Sept. 20, 1961, such projects being subject to former chapter 14 of this title prior to its amendment by Pub. L. 87-255, see section 10 of Pub. L. 87-255.

TRANSFER OF FUNCTIONS

In subsec. (e), "Secretary of Transportation" was substituted for "Administrator" (meaning Administrator of the Federal Aviation Agency) pursuant to Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, which transferred all functions, powers, and duties of the Federal Aviation Agency and the Administrator thereof under this section to the Secretary of Transportation. See section 1655(c)(1) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1474 of this title.

§ 1510. Geographical extension of jurisdiction

Whenever the President determines that such action would be in the national interest, he may, to the extent, in the manner, and for such periods of time as he may consider necessary, extend the application of this chapter to any areas of land or water outside of the United States and the overlying airspace thereof in which the Federal Government of the United States, under international treaty, agreement or other lawful arrangement has the necessary legal authority to take such action.

(Pub. L. 85-726, title XI, § 1110, Aug. 23, 1958, 72 Stat. 800.)

REFERENCES IN TEXT

This chapter, referred to in text read in the original, "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

EX. ORD. NO. 10854. EXTENSION OF APPLICATION

Ex. Ord. No. 10854, Nov. 27, 1959, 24 F.R. 9565, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247, provided:

The application of the Federal Aviation Act of 1958 (72 Stat. 731; 49 U.S.C.A. § 1301 et seq.), to the extent necessary to permit the Secretary of Transportation to accomplish the purposes and objectives of Titles III and XII thereof [sections 1341 to 1355 and 1521 to 1523 of this title], is hereby extended to those areas of land or water outside the United States and the overlying airspace thereof over or in which the Federal Government of the United States, under international treaty, agreement or other lawful arrangement, has appropriate jurisdiction or control: *Provided*, That the Secretary of Transportation, prior to taking any action under the authority hereby conferred, shall first consult with the Secretary of State on matters affecting foreign relations, and with the Secretary of Defense on matters affecting national-defense interests, and shall not take any action which the Secretary of State determines to be in conflict with any international treaty or agreement to which the United States is a party, or to be inconsistent with the successful conduct of the foreign relations of the United States, or which the Secretary of Defense determines to be inconsistent with the requirements of national defense.

EX. ORD. NO. 11326. REGULATION OF AIR TRANSPORTATION IN RYUKYU ISLANDS

Ex. Ord. No. 11326, Feb. 13, 1967, 32 F.R. 2841, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247, provided:

By virtue of the authority vested in me by the Constitution and laws of the United States, including Section 1110 of the Federal Aviation Act of 1958 (72 Stat. 800, 49 U.S.C. 1510), and as President of the United States and Commander in Chief of the Armed Forces of the United States, and having determined that such action would be in the national interest, it is hereby ordered as follows:

SECTION 1. As used in this order,

(a) "Ryukyu Islands" means the territory, including territorial waters and overlying airspace, to which Executive Order No. 10713 of June 5, 1957, as amended, applies.

(b) "Act" means the Federal Aviation Act of 1958 (72 Stat. 731, 49 U.S.C. 1301 *et seq.*), as amended.

(c) "Board" means the Civil Aeronautics Board.

(d) "High Commissioner" means the High Commissioner of the Ryukyu Islands.

SEC. 2. The provisions of Titles IV, VII, IX, X, and Section 1108(b) of the Act [sections 1371 to 1387, 1461 to 1463, 1471 to 1474, 1481 to 1489, and 1508(b) of this title], together with the related definitions in Section 101 thereof [section 1301 of this title], are extended to the Ryukyu Islands insofar as applicable to the economic regulation by the Board of civil air transportation originating in the Ryukyu Islands and terminating elsewhere, or terminating in the Ryukyu Islands and originating elsewhere, or transiting the Ryukyu Islands.

SEC. 3. The provisions of Title VII of the Act [sections 1441 to 1443 of this title] are extended to the Ryukyu Islands for all purposes.

SEC. 4. Before taking action on any application filed pursuant to the Act as extended by this order, the Board shall obtain and consider the views of the High Commissioner concerning such application. The High Commissioner shall promptly provide such views to the Board on request.

SEC. 5. All presently outstanding orders, authorizations, and regulations applicable to the Ryukyu Islands, heretofore entered by the Board under the Act or by a predecessor agency under the Civil Aeronautics Act of 1938 (52 Stat. 973), are hereby ratified and confirmed.

SEC. 6. The High Commissioner shall control and regulate aviation within the Ryukyu Islands except as provided in Sections 2 and 3. The Board and the Secretary of Transportation shall furnish the High Commissioner such technical advice and assistance, pursuant to interagency agreement, as he shall require to carry out this responsibility.

SEC. 7. The Ryukyu Islands are removed from the applicability of Executive Order No. 10854 of November 27, 1959.

LYNDON B. JOHNSON.

§ 1511. Authority to refuse transportation; grounds; agreements for carriage of persons or property deemed to include agreements to refuse carriage upon refusal of consent to search

(a) The Secretary of Transportation shall, by regulation, require any air carrier, intrastate air carrier, or foreign air carrier to refuse to transport—

(1) any person who does not consent to a search of his person, as prescribed in section

1356(a) of this title, to determine whether he is unlawfully carrying a dangerous weapon, explosive, or other destructive substance, or

(2) any property of any person who does not consent to a search or inspection of such property to determine whether it unlawfully contains a dangerous weapon, explosive, or other destructive substance.

Subject to reasonable rules and regulations prescribed by the Secretary of Transportation, any such carrier may also refuse transportation of a passenger or property when, in the opinion of the carrier, such transportation would or might be inimical to safety of flight.

(b) Any agreement for the carriage of persons or property in air transportation or intrastate air transportation by an air carrier, intrastate air carrier, or foreign air carrier for compensation or hire shall be deemed to include an agreement that such carriage shall be refused when consent to search such persons or inspect such property for the purposes enumerated in subsection (a) of this section is not given.

(Pub. L. 85-726, title XI, § 1111, as added Pub. L. 87-197, § 4, Sept. 5, 1961, 75 Stat. 467, and amended Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937; Pub. L. 93-366, title II, § 204, Aug. 5, 1974, 88 Stat. 418.)

AMENDMENTS

1974—Pub. L. 93-366 designated existing provisions as subsec. (a) and, as so designated, added authorization of Administrator to refuse transportation to any person or any property of any person where consent to the search of such person or property was not given, and added subsec. (b).

TRANSFER OF FUNCTIONS

In subsec. (a), "Secretary of Transportation" was substituted for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89-670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under this section to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1655 of this title.

§ 1512. State or subdivision income tax withholding on compensation paid to interstate air carrier employees

(a) Withholding where employee earns more than 50 per centum of compensation paid by carrier to him or where employee resides; filing of information return by carrier

No part of the compensation paid by any air carrier to an employee who performs his regularly assigned duties as such an employee on an aircraft in more than one State shall be withheld for income tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision wherein more than 50 per centum of the compensation paid by the carrier to such employee is earned: *Provided, however,* That if the employee did not earn more than 50 per centum of his compensation from said carrier in any one State or subdivision thereof during the preceding calendar year, then withholding shall be required only for the State or subdivision of the employee's residence, as shown on the employment records of any such carrier; nor shall such carrier file any information return or other report for income tax purposes with respect to such compensation with any State or subdivision thereof other than such State or subdivision of residence and the State or subdivision for which the withholding of such tax has been required under this subsection.

(b) State or subdivision where employee deemed to have earned more than 50 per centum of compensation

For the purposes of subsection (a) of this section, an employee shall be deemed to have earned 50 per centum of his compensation in any State or subdivision in which his scheduled flight time in such State or subdivision is more than 50 per centum of his total scheduled flight time in the calendar year while so employed.

(c) Definitions

For the purposes of this section the term "State" also means the District of Columbia and any of the possessions of the United States; and the term "compensation" shall mean all moneys received for services rendered by an employee, as defined in subsection (a) of this section in the performance of his duties and shall include wages and salary.

(Pub. L. 85-726, title XI, § 1112, as added Pub. L. 91-569, § 4(a), Dec. 23, 1970, 84 Stat. 1502.)

EFFECTIVE DATE

Section effective January 1, 1971, see section 5 of Pub. L. 91-659, set out as an Effective Date note under section 26a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 6362.

§ 1513. State taxation of air commerce

(a) Prohibition; exemption

No State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) shall levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom; except that any State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) which levied a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom prior to May 21, 1970, shall be exempt from the provisions of this subsection until December 31, 1973.

(b) Permissible State taxes and fees

Nothing in this section shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) from the levy or collection of taxes other than those enumerated in subsection (a) of this section, including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services; and nothing in this section shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) owning or operating an airport from levying or collecting reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities.

(c) Nonapplicability of subsection (a) to airport operating authority until December 31, 1973

In the case of any airport operating authority which—

(1) has an outstanding obligation to repay a loan or loans of amounts borrowed and expended for airport improvements;

(2) is collecting without air carrier assistance, a head tax on passengers in air transportation for the use of its facilities; and

(3) has no authority to collect any other type of tax to repay such loan or loans,

the provisions of subsection (a) of this section shall not apply to such authority until December 31, 1973.

(Pub. L. 85-726, title XI, § 1113, as added Pub. L. 93-44, § 7(a), June 18, 1973, 87 Stat. 90.)

§ 1514. Suspension of air services by President; grounds; authority of President deemed condition to issuance of certificate of public convenience and necessity, etc.; unlawful activities

(a) Whenever the President determines that a foreign nation is acting in a manner inconsistent with the Convention for the Suppression of Unlawful Seizure of Aircraft, or if he determines that a foreign nation permits the use of territory under its jurisdiction as a base of operations or training or as a sanctuary for, or in any way arms, aids, or abets, any terrorist organization which knowingly uses the illegal seizure of aircraft or the threat thereof as an instrument of policy, he may, without notice or hearing and for as long as he determines necessary to assure the security of aircraft against unlawful seizure, suspend (1) the right of any air carrier or foreign air carrier to engage in foreign air transportation, and the right of any person to operate aircraft in foreign air commerce, to and from that foreign nation, and (2) the right of any foreign air carrier to engage in foreign air transportation, and the right of any foreign person to operate aircraft in foreign air commerce, between the United States and any foreign nation which maintains air service between itself and that foreign nation. Notwithstanding section 1502 of this title, the President's authority to suspend rights under this section shall be deemed to be a condition to any certificate of public convenience and necessity or foreign air carrier or foreign aircraft permit issued by the Civil Aeronautics Board and any air carrier operating certificate or foreign air carrier operating specification issued by the Secretary of Transportation.

(b) It shall be unlawful for any air carrier or foreign air carrier to engage in foreign air transportation, or for any person to operate aircraft in foreign air commerce, in violation of the suspension of rights by the President under this section.

(Pub. L. 85-726, title XI, § 1114, as added Pub. L. 93-366, title I, § 106, Aug. 5, 1974, 88 Stat. 413.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1471, 1487 of this title.

§ 1515. Security standards in foreign air transportation; notice to foreign nation by Secretary of State of standards requirements; determination by Secretary of Transportation and notice to foreign nations of compliance with minimum standards and necessary remedial measures; effect of failure to take remedial measures

(a) Not later than 30 days after August 5, 1974, the Secretary of State shall notify each nation with which the United States has a bilateral air transport agreement or, in the absence of such agreement, each nation whose airline or airlines hold a foreign air carrier permit or permits issued pursuant to section 1372 of this title, of the provisions of subsection (b) of this section.

(b) In any case where the Secretary of Transportation, after consultation with the competent aeronautical authorities of a foreign nation with which the United States has a bilateral air transport agreement and in accordance with the provisions of that agreement or, in the absence of such agreement, of a nation whose airline or airlines hold a foreign air carrier permit or permits issued pursuant to section 1372 of this title, finds that such nation does not effectively maintain and administer security measures relating to transportation of persons or property or mail in foreign air transportation that are equal to or above the minimum standards which are established pursuant to the Convention on International Civil Aviation, he shall notify that nation of such finding and the steps considered necessary to bring the security measures of that nation to standards at least equal to the minimum standards of such convention. In the event of failure of that nation to take such steps, the Secretary of Transportation, with the approval of the Secretary of State, may withhold, revoke, or impose conditions on the operating authority of the airline or airlines of that nation.

(Pub. L. 85-726, title XI, § 1115, as added Pub. L. 93-366, title I, § 106, Aug. 5, 1974, 88 Stat. 414.)

§ 1516. Property not lawfully transportable in aircraft cabin transported as baggage; liability of air carrier for loss or damage; terms and conditions of liability

The Civil Aeronautics Board shall issue such regulations or orders as may be necessary to re-

quire that any air carrier receiving for transportation as baggage any property of a person traveling in air transportation, which property cannot lawfully be carried by such person in the aircraft cabin by reason of any Federal law or regulation, shall assume liability to such person, at a reasonable charge and subject to reasonable terms and conditions, within the amount declared to the air carrier by such person, for the full actual loss or damage to such property caused by such air carrier.

(Pub. L. 85–726, title XI, § 1116, as added Pub. L. 93–366, title II, § 205, Aug. 5, 1974, 88 Stat. 418.)

§ 1517. Transportation of government financed passengers and property by certified carriers; disallowance of payments by Comptroller General

Whenever any executive department or other agency or instrumentality of the United States shall procure, contract for, or otherwise obtain for its own account or in furtherance of the purposes or pursuant to the terms of any contract, agreement, or other special arrangement made or entered into under which payment is made by the United States or payment is made from funds appropriated, owned, controlled, granted, or conditionally granted or utilized by or otherwise established for the account of the United States, or shall furnish to or for the account of any foreign nation, or any international agency, or other organization, of whatever nationality, without provisions for reimbursement, any transportation of persons (and their personal effects) or property by air between a place in the United States and a place outside thereof or between two places both of which are outside the United States, the appropriate agency or agencies shall take such steps as may be necessary to assure that such transportation is provided by air carriers holding certificates under section 1371 of this title to the extent authorized by such certificates or by regulations or exemption of the Civil Aeronautics Board and to the extent service by such carriers is available. The Comptroller General of the United States shall disallow any expenditure from appropriated funds for payment for such personnel or cargo transportation on an air carrier not holding a certificate under section 1371 of this title in the absence of satisfactory proof of the necessity therefor. Nothing in this section shall prevent the application to such traffic of the antidiscrimination provisions of this chapter.

(Pub. L. 85–726, title XI, § 1117, as added Pub. L. 93–623, § 5(a), Jan. 3, 1975, 88 Stat. 2104.)

References in Text

This chapter, referred to in text, read in the original, "this Act", meaning Pub. L. 85–726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

SUBCHAPTER XII—SECURITY PROVISIONS

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 1471, 1472, 1655 of this title.

§ 1521. Declaration of purpose

The purpose of this subchapter is to establish security provisions which will encourage and permit the maximum use of the navigable airspace by civil aircraft consistent with the national security.

(Pub. L. 85–726, title XII, § 1201, Aug. 23, 1958, 72 Stat. 800.)

Effective Date

Subchapter effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now the Federal Aviation Administration] first appointed under this chapter qualifies and takes office, see section 1505(2) of Pub. l. 85–726, set out as a note under section 1301 of this title. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

Transfer of Functions

All functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof were transferred to the Secretary of Transportation by Pub. L. 89–670, § 6(c)(1), Oct. 15, 1955, 80 Stat. 937, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under this subchapter to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

§ 1522. Security control of air traffic

In the exercise of his authority under section 1348(a) of this title, the Secretary of Transportation, in consultation with the Department of Defense, shall establish such zones or areas in the airspace of the United States as he may find necessary in the interests of national defense, and by rule, regulation, or order restrict or prohibit the flight of civil aircraft, which he cannot identify, locate, and control with available facilities, within such zones or areas.

(Pub. L. 85–726, title XII, § 1202, Aug. 23, 1958, 72 Stat. 800; Pub. L. 89–670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937.)

Transfer of Functions

"Secretary of Transportation" was substituted for "Administrator" (meaning Federal Aviation Administrator) on authority of Pub. L. 89–670, § 6(c)(1), Oct. 15, 1966, 80 Stat. 937, in view of the transfer of all functions, powers, and duties of the Federal Aviation Agency and of the Administrator and other offices and officers thereof to the Secretary of Transportation, with the functions, powers, and duties of the Secretary of Transportation pertaining to aviation safety under the subchapter to be exercised by the Federal Aviation Administrator in the Department of Transportation. See sections 1655(c)(1) and 1657(f), (g) of this title.

§ 1523. Penalties

In addition to the penalties otherwise provided for by this chapter, any person who knowingly or willfully violates any provision of this subchapter, or any rule, regulation, or order issued thereunder shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not exceeding $10,000 or to imprisonment not exceeding one year, or to both such fine and imprisonment.

(Pub. L. 85–726, title XII, § 1203, Aug. 23, 1958, 72 Stat. 800.)

REFERENCES IN TEXT

This chapter, referred to in text, read in the original "this Act", meaning Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, known as the Federal Aviation Act of 1958. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

SUBCHAPTER XIII—WAR RISK INSURANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1655 of this title.

§ 1531. Definitions

As used in this subchapter—

(a) The term "American aircraft" means "civil aircraft of the United States" as defined in section 1301(15) of this title, and any aircraft owned or chartered by or made available to the United States, or any department or agency thereof, or the government of any State, Territory, or possession of the United States, or any political subdivision thereof, or the District of Columbia.

(b) The term "war risks" includes, to such extent as the Secretary may determine, all or any part of those risks which are described in "free of capture and seizure" clauses, or analogous clauses.

(c) The term "Secretary" means the Secretary of Transportation.

(d) The terms "insurance company" and "insurance carrier" in sections 1535(a) and (b) and 1537(d) of this title shall include any mutual or stock insurance company, reciprocal insurance association, and any group or association authorized to do an aviation insurance business in any State of the United States.

(Pub. L. 85-726, title XIII, § 1301, Aug. 23, 1958, 72 Stat. 800; Pub. L. 89-670, § 6(a)(3)(C), Oct. 15, 1966, 80 Stat. 937.)

EFFECTIVE DATE

Subchapter effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency [now the Federal Aviation Administration] first appointed under this chapter qualifies and takes office, see section 1505(2) of Pub. L. 85-726, set out as a note under section 1301 of this title. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

TRANSFER OF FUNCTIONS

"Secretary of Transportation" was substituted for "Secretary of Commerce" pursuant to Pub. L. 89-670, § 6(a)(3)(C), Oct. 15, 1966, 80 Stat. 937, which transferred all functions, powers, and duties of the Secretary of Commerce and other officers and offices of the Department of Commerce under this subchapter to the Secretary of Transportation. See section 1655(a)(3)(C) of this title.

EXPANSION OF WAR RISK INSURANCE; INVESTIGATION AND STUDY BY PRESIDENT; REPORT TO CONGRESS

Pub. L. 94-90, § 3, Aug. 9, 1975, 89 Stat. 439, provided that the President conduct a full and complete investigation and study of the possible expansion of the war risk insurance authorized by this subchapter and other provisions of law, to provide coverage for losses and damage resulting from riots, civil disorder, hijacking, or other similar acts and to report to Congress not later than the ninetieth day after Aug. 9, 1975, the results of this investigation and study together with his recommendations for possible legislation.

§ 1532. Authority to provide insurance; consideration of risk

(a) The Secretary, with the approval of the President, and after such consultation with interested agencies of the Government as the President may require, may provide insurance and reinsurance against loss or damage arising out of war risks in the manner and to the extent provided in this subchapter, whenever it is determined by the Secretary that such insurance adequate for the needs of the air commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do an insurance business in a State of the United States: *Provided*, That no insurance shall be issued under this subchapter to cover war risks on persons or property engaged or transported exclusively in air commerce within the several States of the United States and the District of Columbia.

(b) Any insurance or reinsurance issued under any of the provisions of this subchapter shall be based, insofar as practicable, upon consideration of the risk involved.

(Pub. L. 85-726, title XIII, § 1302, Aug. 23, 1958, 72 Stat. 801.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other offices and officers of the Department of Commerce under this section relating generally to aircraft were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, § 6(a)(3)(C), Oct. 15, 1966, 80 Stat. 937, which created the Department of Transportation. See section 1655(a)(3)(C) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1533 of this title.

§ 1533. Persons, property, and interests insurable

The Secretary may provide the insurance and reinsurance, authorized by section 1532 of this title with respect to the following persons, property, or interest:

(a) American aircraft, and those foreign-flag aircraft engaged in aircraft operations deemed by the Secretary to be in the interest of the national defense or the national economy of the United States, when so engaged.

(b) Cargoes transported or to be transported on any such aircraft, including shipments by express or registered mail; air cargoes owned by citizens or residents of the United States, its Territories, or possessions; air cargoes imported to, or exported from, the United States, its Territories, or possessions and air cargoes sold, or purchased by citizens or residents of the United States, its Territories, or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories, or possessions; air cargoes transported between any point in the United States and any point in a Territory or possession of the United States, between any point in any such Territory or possession and any point in any other such Territory or possession, or between any point in any

such Territory or possession and any other point in the same Territory or possession.

(c) The personal effects and baggage of the captains, pilots, officers, members of the crews of such aircraft, and of other persons employed or transported on such aircraft.

(d) Captains, pilots, officers, members of the crews of such aircraft, and other persons employed or transported thereon against loss of life, injury, or detention.

(e) Statutory or contractual obligations or other liabilities of such aircraft or of the owner or operator of such aircraft of the nature customarily covered by insurance.

(Pub. L. 85–726, title XIII, § 1303, Aug. 23, 1958, 72 Stat. 801.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other offices and officers of the Department of Commerce under this section relating generally to aircraft were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, § 6(a)(3)(C), Oct. 15, 1966, 80 Stat. 937, which created the Department of Transportation. See section 1655(a)(3)(C) of this title.

§ 1534. Insurance of property of Government departments and agencies; indemnity agreements

(a) Any department or agency of the United States may, with the approval of the President, procure from the Secretary any of the insurance provided under this subchapter, except with respect to valuables covered by sections 721 and 722 of title 40.

(b) The Secretary is authorized with such approval to provide such insurance at the request of the Secretary of Defense, and such other agencies as the President may prescribe, without premium in consideration of the agreement of the Secretary of Defense or such agency to indemnify the Secretary against all losses covered by such insurance, and the Secretary of Defense and such other agencies are authorized to execute such indemnity agreement with the Secretary.

(Pub. L. 85–726, title XIII, § 1304, Aug. 23, 1958, 72 Stat. 802.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other offices and officers of the Department of Commerce under this section relating generally to aircraft were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, § 6(a)(3)(C), Oct. 15, 1966, 80 Stat. 937, which created the Department of Transportation. See section 1655(a)(3)(C) of this title.

§ 1535. Reinsurance; rates; allowances to insurance carriers

(a) To the extent that he is authorized by this subchapter to provide insurance, the Secretary may reinsure, in whole or in part, any company authorized to do an insurance business in any State of the United States. The Secretary may reinsure with, or cede or retrocede to, any such company, any insurance or reinsurance provided by the Secretary in accordance with the provisions of this subchapter.

(b) Reinsurance shall not be provided by the Secretary at rates less than nor obtained by the Secretary at rates more than the rates established by the Secretary on the same or similar risks or the rates charged by the insurance carrier for the insurance so reinsured, whichever is most advantageous to the Secretary, except that the Secretary may make to the insurance carrier such allowances for expenses on account of the cost of services rendered or facilities furnished as he deems reasonably to accord with good business practice, but such allowance to the carrier shall not provide for any payment by the carrier on account of solicitation for or stimulation of insurance business.

(Pub. L. 85–726, title XIII, § 1305, Aug. 23, 1958, 72 Stat. 802.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other offices and officers of the Department of Commerce under this section relating generally to aircraft were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, § 6(a)(3)(C), Oct. 15, 1966, 80 Stat. 937, which created the Department of Transportation. See section 1655(a)(3)(C) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1531 of this title.

§ 1536. Insurance fund

(a) Creation of revolving fund; payments from fund

Moneys appropriated by Congress to carry out the provisions of this subchapter and all moneys received from premiums, salvage, or other recoveries and all receipts in connection with this subchapter shall be deposited in a revolving fund in the Treasury of the United States. Payments of return premiums, losses, settlements, judgments, and all liabilities incurred by the United States under this subchapter shall be made from such funds through the disbursing facilities of the Treasury Department.

(b) Appropriations

Such sums as shall be necessary to carry out the provisions of this subchapter are authorized to be appropriated to such fund.

(c) Payment of surplus into Treasury

At least annually, any balance in the revolving fund in excess of an amount determined by the Secretary to be necessary for the requirements of the fund, and for reasonable reserves to maintain the solvency of the fund shall be paid into the Treasury as miscellaneous receipts.

(d) Annual payments to Treasury as miscellaneous receipts

Annual payments shall be made by the Secretary to the Treasury of the United States as miscellaneous receipts by reason of costs incurred by the Government through the employment of appropriated funds by the Secretary in carrying out the provisions of this subchapter. These payments shall be computed by applying to the average monthly balance of appropriated funds retained in the revolving fund a percentage determined annually in advance by the Secretary of the Treasury. Such percentage shall not be less than the current average rate which the Treasury pays on its marketable obligations.

(e) Contributions to Civil Service Retirement and Disability Fund and employees' compensation fund; annual billings

The Secretary shall contribute to the Civil Service Retirement and Disability Fund, on the basis of annual billings as determined by the Civil Service Commission, for the Government's share of the cost of the Civil Service Retirement System applicable to the employees engaged in carrying out the provisions of this subchapter. The Secretary shall also contribute to the employees' compensation fund, on the basis of annual billings as determined by the Secretary of Labor for the benefit payments made from such fund on account of the employees engaged in carrying out the provisions of this subchapter. The annual billings shall also include a statement of the fair portion of the cost of the administration of the respective funds, which shall be paid by the Secretary into the Treasury as miscellaneous receipts.

(f) Investment of revolving fund

Upon the request of the Secretary, the Secretary of the Treasury may invest all or any part of the revolving fund in interest-bearing securities of the United States. The interest on, and the proceeds from the sale or redemption of, any securities held in the revolving fund shall be credited to and form a part of the revolving fund.

(Pub. L. 85-726, title XIII, § 1306, Aug. 23, 1958, 72 Stat. 803; Pub. L. 94-90, § 1(a), Aug. 9, 1975, 89 Stat. 439.)

AMENDMENTS

1975—Subsec. (f). Pub. L. 94-90 added subsec. (f).

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other offices and officers of the Department of Commerce under this section relating generally to aircraft were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, § 6(a)(3)(C), Oct. 15, 1966, 80 Stat. 937, which created the Department of Transportation. See section 1655(a)(3)(C) of this title.

§ 1537. Administrative provisions

(a) Issuance of policies; rules and regulations; settlement of claims

The Secretary, in the administration of this subchapter, may issue such policies, rules, and regulations as he deems proper and, subject to the following provisions of this subsection, may adjust and pay losses, compromise and settle claims, whether in favor of or against the United States and pay the amount of any judgment rendered against the United States in any suit, or the amount of any settlement agreed upon, in respect of any claim under insurance authorized by this subchapter. In the case of any aircraft which is insured under the provisions of this subchapter, (1) the policy shall specify a stated amount to be paid in the event of total loss, and such stated amount shall not exceed an amount determined by the Secretary, after consultation with the Civil Aeronautics Board, to represent the fair and reasonable value of the aircraft, and (2) the amount of any claim which is compromised, settled, adjusted, or paid shall in no event exceed such stated amount.

(b) Forms and policies; rates

The Secretary may prescribe and change forms and policies, and fix, adjust, and change the amounts insured and rates of premium provided for in this subchapter: *Provided*, That with respect to policies in effect at the time any such change is made, such change shall apply only with the consent of the insured.

(c) Commercial practice controlling; limitation on fees

The Secretary, in administering this subchapter, may exercise his powers, perform his duties and functions, and make his expenditures, in accordance with commercial practice in the aviation insurance business. Except as authorized in subsection (d) of this section, no insurance broker or other person acting in a similar intermediary capacity shall be paid any fee or other consideration by the Secretary by virtue of his participation in arranging any insurance wherein the Secretary directly insures any of the risk thereof.

(d) Underwriting agents

The Secretary may, and whenever he finds it practical to do so shall, employ companies or groups of companies authorized to do an aviation insurance business in any State of the United States, to act as his underwriting agent. The Secretary may allow such companies or groups of companies fair and reasonable compensation for servicing insurance written by such companies or groups of companies as underwriting agent for the Secretary. The services of such underwriting agents may be utilized in the adjustment of claims under insurance provided by this subchapter, but no claim shall be paid unless and until it has been approved by the Secretary. Such compensation may include an allowance for expenses reasonably incurred by such agent, but such allowance shall not include any payment by such agent on account of solicitation for or stimulation of insurance business.

(e) Utilization of services of other Government agencies

The Secretary with the consent of any executive department, independent establishment, or other agency of the Government, including any field service thereof, may avail himself of the use of information, services, facilities, officers, and employees thereof in carrying out the provisions of this subchapter.

(f) Budget program; maintenance of accounts; audit; credit for certain expenditures

The Secretary, in the performance of, and with respect to, the functions, powers, and duties vested in him by this subchapter, shall prepare annually and submit a budget program as provided for wholly owned Government corporations by the Government Corporation Control Act, as amended [31 U.S.C. 841 et seq.]. The Secretary shall maintain a set of accounts which shall be audited by the Comptroller General in accordance with the provisions of the Accounting and Auditing Act of 1950 [31 U.S.C. 65 et seq.]: *Provided*, That, because of the business activities authorized by this subchapter, the Secretary may exercise the powers conferred in said subchapter, perform the duties and functions, and make expenditures required

in accordance with commercial practice in the aviation insurance business, and the General Accounting Office shall allow credit for such expenditures when shown to be necessary because of the nature of such authorized activities.

(Pub. L. 85–726, title XIII, § 1307, Aug. 23, 1958, 72 Stat. 803; Pub. L. 93–604, title VII, § 702, Jan. 2, 1975, 88 Stat. 1964.)

REFERENCES IN TEXT

The Government Corporation Control Act, as amended, referred to in subsec. (f), is act Dec. 6, 1945, ch. 557, 59 Stat. 597, as amended, which is classified generally to chapter 14 (§ 841 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 841 of Title 31 and Tables volume.

The Accounting and Auditing Act of 1950, referred to in subsec. (f), is act Sept. 12, 1950, ch. 946, title I, part II, 64 Stat. 834, as amended, which is classified generally to chapter 1A (§ 65 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 65 of Title 31 and Tables volume.

AMENDMENTS

1975—Subsec. (f). Pub. L. 93–604 substituted provisions that the Secretary shall maintain a set of accounts which shall be audited by the Comptroller General in accordance with the provisions of the Accounting and Auditing Act of 1950, for provisions that the Secretary shall maintain an integral set of accounts which shall be audited annually by the General Accounting Office in accordance with principles and procedures applicable to commercial transactions as provided by the Government Corporation Control Act.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other offices and officers of the Department of Commerce under this section relating generally to aircraft were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, § 6(a)(3)(C), Oct. 15, 1966, 80 Stat. 937, which created the Department of Transportation. See section 1655(a)(3)(C) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1531 of this title.

§ 1538. Rights of airmen under existing law

This subchapter shall not affect rights of airmen under existing law.

(Pub. L. 85–726, title XIII, § 1308, Aug. 23, 1958, 72 Stat. 805.)

§ 1539. Annual and quarterly reports to Congress

The Secretary shall include in his annual report to Congress a detailed statement of all activities and of all expenditures and receipts under this subchapter for the period covered by such report and in addition make quarterly progress reports to the Congress with reference to contracts entered into, proposed contracts, and the general progress of his insurance activities.

(Pub. L. 85–726, title XIII, § 1309, Aug. 23, 1958, 72 Stat. 805.)

REPORTS OF AVIATION WAR RISK INSURANCE ACTIVITIES

Pub. L. 89–348, § 1(6), Nov. 8, 1965, 79 Stat. 1310, repealed provision of this section which related to quarterly report of contracts entered into, proposed contracts, and general progress with respect to aviation war risk insurance activities.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other offices and officers of the Department of Commerce under this section relating generally to aircraft were transferred to and vested in the Secretary of Transportation by Pub. L. 89–670, § 6(a)(3)(C), Oct. 15, 1966, 80 Stat. 937, which created the Department of Transportation. See section 1655(a)(3)(C) of this title.

§ 1540. Actions on claims for losses; jurisdiction of courts; limitation of actions

Upon disagreement as to a loss insured under this subchapter, suit may be maintained against the United States in the United States District Court for the District of Columbia or in the United States district court in and for the district in which the claimant or his agent resides, notwithstanding the amount of the claim and any provision of existing law as to the jurisdiction of United States district courts, and this remedy shall be exclusive of any other action by reason of the same subject matter against any agent or employee of the United States employed or retained under this subchapter. If the claimant has no residence in the United States, suit may be brought in the United States District Court for the District of Columbia or in any other United States district court in which the Attorney General of the United States agrees to accept service. The procedure in such suits shall otherwise be the same as that provided for suits in the district courts by section 1346(a)(2) of title 28, so far as applicable. All persons having or claiming or who might have an interest in such insurance may be made parties either initially or upon the motion of either party. In any case where the Secretary acknowledges the indebtedness of the United States on account of such insurance, and there is a dispute as to the persons entitled to receive payment, the United States may bring an action in the nature of a bill of interpleader against such parties, in the United States District Court for the District of Columbia, or in the United States district court of the district in which any such person resides. In such actions any party, if not a resident of or found within the district, may be brought in by order of court served in such reasonable manner as the court directs. If the court is satisfied that persons unknown might assert a claim on account of such insurance, it may direct service upon such persons unknown by publication in the Federal Register. Judgment in any such suit shall discharge the United States from further liability to any parties to such action, and to all persons when service by publication upon persons unknown is directed by the court. The period within which suits may be commenced contained in section 2401 of title 28 providing for bringing of suits against the United States shall, if claim be filed therefor within such period, be suspended from such time of filing until the claim shall have been administratively denied by the Secretary and for sixty days thereafter: *Provided, however,* That such claim shall be deemed to have been

administratively denied if not acted upon within six months after the time of filing, unless the Secretary for good cause shown shall have otherwise agreed with the claimant.

(Pub. L. 85-726, title XIII, § 1310, Aug. 23, 1958, 72 Stat. 805.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other offices and officers of the Department of Commerce under this section relating generally to aircraft were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, § 6(a)(3)(C), Oct. 15, 1966, 80 Stat. 937, which created the Department of Transportation. See section 1655(a)(3)(C) of this title.

§ 1541. Additional insurance with other underwriters

A person having an insurable interest in an aircraft may, with the approval of the Secretary, insure with other underwriters in an amount in excess of the amount insured with the Secretary, and, in that event, the Secretary shall not be entitled to the benefit of such insurance, but nothing in this section shall prevent the Secretary from entering into contracts of coinsurance.

(Pub. L. 85-726, title XIII, § 1311, Aug. 23, 1958, 72 Stat. 806.)

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other offices and officers of the Department of Commerce under this section relating generally to aircraft were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, § 6(a)(3)(C), Oct. 15, 1966, 80 Stat. 937, which created the Department of Transportation. See section 1655(a)(3)(C) of this title.

§ 1542. Expiration of authority to provide insurance

The authority of the Secretary to provide insurance and reinsurance under this subchapter shall expire at the termination of May 7, 1977.

(Pub. L. 85-726, title XIII, § 1312, Aug. 23, 1958, 72 Stat. 806; Pub. L. 87-89, July 20, 1961, 75 Stat. 210; Pub. L. 89-447, June 13, 1966, 80 Stat. 199; Pub. L. 91-399, Sept. 8, 1970, 84 Stat. 837; Pub. L. 94-90, § 2, Aug. 9, 1975, 89 Stat. 439; Pub. L. 94-374, July 31, 1976, 90 Stat. 1065.)

AMENDMENTS

1976—Pub. L. 94-374 substituted "May 7, 1977" for "May 7, 1976".

1975—Pub. L. 94-90 substituted "May 7, 1976" for "September 7, 1975".

1970—Pub. L. 91-399 substituted "1975" for "1970".

1966—Pub. L. 89-447 substituted "September 7, 1970" for "June 13, 1966".

1961—Pub. L. 87-89 substituted "1966" for "1961".

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Secretary of Commerce and other offices and officers of the Department of Commerce under this section relating generally to aircraft were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, § 6(a)(3)(C), Oct. 15, 1966, 80 Stat. 937, which created the Department of Transportation. See section 1655(a)(3)(C) of this title.

CHAPTER 21—URBAN MASS TRANSPORTATION

Sec.
1601. Declaration of findings and purposes.
1601a. Additional Congressional findings.
1601b. Additional Congressional findings.
1602. Federal financial assistance.
(a) Grants or loans to States and local public agencies; uses of funds; eligible facilities and equipment; eligibility of applicant; real property acquisition; prohibitions on uses of grant or loan funds; development of plans and programs of transportation systems for urbanized areas; scope and implementation of projects; cutoff date for approval of projects.
(b) Acquisition of real property; uses; provisions of loan agreement; repayment and forgiveness of loans; submission of applications to the Secretary and the comprehensive planning agency of the community affected and consideration of comments of such agency by the Secretary.
(c) Loan restrictions and limitations; interest.
(d) Notice and public hearings.
(e) Private transit operators.
(f) Purchase or operation of buses.
(g) Schoolbus operations.
(h) Alternate use of financial assistance for payment of operating expenses; maximum amount; terms and conditions.
1602a. Federal financial assistance agreements.
(a) Assistant for bus purchases subject to agreement against charter bus operations outside of regularly scheduled mass transportation service area; exceptions.
(b) Assistance for bus purchases subject to agreement against competitive school bus operations with private school bus operators; nonapplication of restriction under certain circumstances.
1603. Long-range program.
(a) Terms and conditions; planning requirements; "net project cost" defined; Federal grant for two-thirds and non-Federal funds for one-third of net project cost; refunds.
(b) Appropriations; advance or progress payments.
(c) Additional appropriations.
(d) Annual reports to Congress.
1604. Urban mass transit grant program.
(a) Definitions.
(b) Apportionment of funds; formula; density of population factor; designated recipient of apportioned funds to receive and dispense funds; availability of funds not expended by designated recipients.
(c) Grant, contract, etc., obligations for financing grants; maximum amount; authorization of appropriations for liquidation of obligations; availability of appropriations; availability of apportioned sums for obligation; return to Treasury of unobligated apportioned amounts.
(d) Approval of projects for acquisition, construction, and improvement of facilities and equipment, and payment of operating expenses; terms and conditions; regulations.

Sec.
(e) Limitation on amount of grants for construction and operating expense projects; source of remainder of funds for projects.
(f) Federal funds available for expenditure for projects supplementary to average amount of State and local government funds, etc., expended for operations; State and local tax revenues expended for operations credited to non-Federal share of project costs.
(g) Development of plans and programs of transportation systems for urbanized areas; scope and implementation of projects; cutoff date for approval of projects; submission by Governor or designated recipient and approval by Secretary of program of projects for utilization of funds; consideration and comments on programs.
(h) Submission by Governor or designated recipient and approval by Secretary of surveys, plans, etc., of proposed projects; grant or contract agreement as contractual obligation of Federal government; criteria for approval of projects.
(i) Certification by Governor or designated recipient to Secretary of compliance with procedures for determination of environmental, etc., impact of proposed projects; report.
(j) Acceptance of certification as discharge of Secretary's responsibilities; final inspection or review and report of projects; guidelines and regulations; rescission of acceptance of certification; Secretary's responsibilities under other Federal laws not affected.
(k) Formal project agreements between Secretary and Governor or designated recipient; arrangements for local funding or cooperation in construction of project; advance grant or contract payments.
(l) Criteria for approval and undertaking of projects.
(m) Maximum amount of fares for elderly and handicapped persons utilizing project facilities and equipment receiving assistance.
(n) Applicability of other provisions.
1604a. Investigation of safety hazards in urban mass transportation systems; submission of plan for correction of unsafe facilities, etc.
1604b. Fares for elderly and handicapped persons.
1605. Research, development, and demonstration projects.
(a) Phases of urban mass transportation; acquisition of data.
(b) Omitted.
(c) Availability and limitation of funds.
(d) Authority of Secretary.
1606. Relocation program.
1607. Omitted.
1607a. Grants for technical studies.
1607b. Grants for managerial training programs.
(a) Fellowships; basis for selection; fellowship funds.
(b) Limitation on fellowships awarded in any one state.
(c) Limitation on funds available for fellowships.
1607c. Grants for research and training in urban transportation problems.
Sec.
1608. General provisions.
(a) Functions, powers, and duties of Secretary.
(b) Records; audit and examination.
(c) Definitions.
(d) Authorization of appropriations.
(e) Regulation of operation of system, rates, rentals, or other charges; compliance with undertakings.
(f) Sex discrimination prohibition; enforcement; remedies.
1609. Labor standards.
(a) Action of Secretary.
(b) Authority of Secretary of Labor.
(c) Interests of employees; protective arrangements; terms and conditions.
1610. Environmental protection.
(a) National policy; cooperation with other Federal departments and agencies.
(b) Review of hearing transcripts.
(c) Findings; inadequate record; notice and hearing.
1611. Reporting system and uniform system of accounts; development, testing, etc.; purposes; implementation; coverage as precondition for future award of grants.
1612. Planning and design of mass transportation facilities to meet special needs of the elderly and the handicapped.
(a) Congressional declaration of policy.
(b) Grants and loans for special projects to meet the needs of elderly and handicapped persons.
(c) Financing of research, development and demonstration projects.
(d) Definition.
1613. Emergency financial assistance.
(a) Purposes of reimbursement.
(b) Nonapplicability.
(c) Terms and conditions; exceptions; waivers.
(d) Federal share of costs of rail passenger service; duration.
(e) Applicability of other statutory provisions.
(f) Funding authority; authorization of appropriations for liquidation of obligations funding assistance programs.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 23 sections 103, 142.

CHAPTER REFERRED TO IN D.C. CODE

This chapter is referred to in sections 1-1463, 1-1464 of the District of Columbia Code.

§ 1601. Declaration of findings and purposes

(a) The Congress finds—

(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

(2) that the welfare and vitality of urban areas, the satisfactory movement of people and goods within such areas, and the effectiveness of housing, urban renewal, highway, and other federally aided programs are being jeopardized by the deterioration or inadequate provision of urban transportation facilities and services, the intensification of traffic congestion, and the lack of coordinated transportation and other development

planning on a comprehensive and continuing basis; and

(3) that Federal financial assistance for the development of efficient and coordinated mass transportation systems is essential to the solution of these urban problems.

(b) The purposes of this chapter are—

(1) to assist in the development of improved mass transportation facilities, equipment, techniques, and methods, with the cooperation of mass transportation companies both public and private;

(2) to encourage the planning and establishment of areawide urban mass transportation systems needed for economical and desirable urban development, with the cooperation of mass transportation companies both public and private; and

(3) to provide assistance to State and local governments and their instrumentalities in financing such systems, to be operated by public or private mass transportation companies as determined by local needs.

(Pub. L. 88-365, § 2, July 9, 1964, 78 Stat. 302.)

SHORT TITLE OF 1974 AMENDMENT

Pub. L. 93-503, § 1, Nov. 26, 1974, 88 Stat. 1566, provided "That this Act [enacting sections 1601b, 1604a, and 1604b of this title, amending sections 1602, 1603, 1604, and 1611 of this title and section 3303 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under section 1605 of this title] may be cited as the 'National Mass Transportation Assistance Act of 1974'."

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91-453, § 14, Oct. 15, 1970, 84 Stat. 969, provided that: "This Act [enacting sections 1601a and 1612 of this title, amending sections 1602 to 1605, 1608, 1610, and 1611 of this title and section 5316 of Title 5, Government Organization and Employees, and enacting provisions set out as notes under sections 1602 and 1605 of this title] may be cited as the 'Urban Mass Transportation Assistance Act of 1970'."

SHORT TITLE

Section 1 of Pub. L. 88-365 provided: "That this Act [which enacted this chapter] may be cited as the 'Urban Mass Transportation Act of 1964'."

§ 1601a. Additional Congressional findings

The Congress finds that the rapid urbanization and the continued dispersal of population and activities within urban areas has made the ability of all citizens to move quickly and at a reasonable cost an urgent national problem; that it is imperative, if efficient, safe, and convenient transportation compatible with soundly planned urban areas is to be achieved, to continue and expand the provisions of this chapter; and that success will require a Federal commitment for the expenditure of at least $10,000,000,000 over a twelve-year period to permit confident and continuing local planning, and greater flexibility in program administration. It is the purpose of this Act to create a partnership which permits the local community, through Federal financial assistance, to exercise the initiative necessary to satisfy its urban mass transportation requirements.

(Pub. L. 91-453, § 1, Oct. 15, 1970, 84 Stat. 962.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 91-453, Oct. 15, 1970, 84 Stat. 962, known as the Urban Mass Transportation Assistance Act of 1970, which enacted this section and section 1612 of this title, amended sections 1602 to 1605, 1608, 1610 and 1611 of this title and section 5316 of Title 5, Government Organization and Employees, and enacted provisions set out as notes under this section and sections 1602 and 1605 of this title. For complete classification of this Act to the Code, see Short Title of 1970 Amendment note set out under section 1601 of this title and Tables volume.

CODIFICATION

Section was not enacted as part of Pub. L. 88-365, July 9, 1964, 78 Stat. 302, known as the Urban Mass Transportation Act of 1964, which comprises this chapter.

§ 1601b. Additional Congressional findings

The Congress finds that—

(1) over 70 per centum of the Nation's population lives in urban areas;

(2) transportation is the lifeblood of an urbanized society and the health and welfare of that society depends upon the provision of efficient economical and convenient transportation within and between its urban area;

(3) for many years the mass transportation industry satisfied the transportation needs of the urban areas of the country capably and profitably;

(4) in recent years the maintenance of even minimal mass transportation service in urban areas has become so financially burdensome as to threaten the continuation of this essential public service;

(5) the termination of such service or the continued increase in its cost to the user is undesirable, and may have a particularly serious adverse effect upon the welfare of a substantial number of lower income persons;

(6) some urban areas are now engaged in developing preliminary plans for, or are actually carrying out, comprehensive projects to revitalize their mass transportation operations; and

(7) immediate substantial Federal assistance is needed to enable many mass transportation systems to continue to provide vital service.

(Pub. L. 93-503, § 2, Nov. 26, 1974, 88 Stat. 1566.)

CODIFICATION

Section was not enacted as part of Pub. L. 88-365, July 9, 1964, 78 Stat. 302, known as the Urban Mass Transportation Act of 1964, which comprises this chapter.

§ 1602. Federal financial assistance

(a) Grants or loans to States and local public agencies; uses of funds; eligible facilities and equipment; eligibility of applicant; real property acquisition; prohibitions on uses of grant or loan funds; development of plans and programs of transportation systems for urbanized areas; scope and implementation of projects; cutoff date for approval of projects

(1) The Secretary is authorized, in accordance with the provisions of this chapter and on such terms and conditions as he may prescribe, to make grants or loans (directly, through the

purchase of securities or equipment trust certificates, or otherwise) to assist States and local public bodies and agencies thereof in financing (1) the acquisition, construction, reconstruction, and improvement of facilities and equipment for use, by operation or lease or otherwise, in mass transportation service in urban areas and in coordinating such service with highway and other transportation in such areas, and (2) the establishment and organization of public or quasi-public transit corridor development corporations or entities. Eligible facilities and equipment may include personal property including buses and other rolling stock and real property including land (but not public highways), within the entire zone affected by the construction and operation of transit improvements, including station sites, needed for an efficient and coordinated mass transportation system which is compatible with socially, economically, and environmentally sound patterns of land use. No grant or loan shall be provided under this section unless the Secretary determines that the applicant has or will have—

(A) the legal, financial, and technical capacity to carry out the proposed project; and

(B) satisfactory continuing control, through operation or lease or otherwise, over the use of the facilities and equipment.

The Secretary may make loans for real property acquisition pursuant to subsection (b) of this section upon a determination, which shall be in lieu of the preceding determinations, that the real property is reasonably expected to be required in connection with a mass transportation system and that it will be used for that purpose within a reasonable period. No grant or loan funds shall be used for payment of ordinary governmental or nonprofit operating expenses, nor shall any grant or loan funds be used to support procurements utilizing exclusionary or discriminatory specifications.

(2) It is declared to be in the national interest to encourage and promote the development of transportation systems, embracing various modes of transport in a manner that will serve the States and local communities efficiently and effectively. To accomplish this objective the Secretary shall cooperate with the States in the development of long-range plans and programs which are properly coordinated with plans for improvements in other affected forms of transportation and which are formulated with due consideration to their probable effect on the future development of urban areas of more than fifty thousand population. The development of projects in urbanized areas under this section shall be based upon a continuing, cooperative, and comprehensive planning process covering all modes of surface transportation and carried on by the States and the governing bodies of local communities in accordance with this paragraph. The Secretary shall not approve any project in an urbanized area after July 1, 1976, under this section unless he finds that such project is based on a continuing comprehensive transportation planning process carried on in conformance with the objectives stated in this paragraph.

(b) Acquisition of real property; uses; provisions of loan agreement; repayment and forgiveness of loans; submission of applications to the Secretary and the comprehensive planning agency of the community affected and consideration of comments of such agency by the Secretary

The Secretary is authorized to make loans under this section to States or local public bodies and agencies thereof to finance the acquisition of real property and interests in real property for use as rights-of-way, station sites, and related purposes, on urban mass transportation systems, including the net cost of property management and relocation payments made pursuant to section 1606 of this title. Each loan agreement under this subsection shall provide for actual construction of urban mass transportation facilities on acquired real property within a period not exceeding ten years following the fiscal year in which the agreement is made. Each agreement shall provide that in the event acquired real property or interests in real property are not to be used for the purposes for which acquired, an appraisal of current value will be made at the time of that determination, which shall not be later than ten years following the fiscal year in which the agreement is made. Two-thirds of the increase in value, if any, over the original cost of the real property shall be paid to the Secretary for credit to miscellaneous receipts of the Treasury. Repayment of amounts loaned shall be credited to miscellaneous receipts of the Treasury. A loan made under this subsection shall be repayable within ten years from the date of the loan agreement or on the date a grant agreement for actual construction of facilities on the acquired real property is made, whichever date is earlier. A grant agreement for construction of facilities under this chapter may provide for forgiveness of the repayment of the principal and accrued interest on the loan then outstanding in lieu of a cash grant in the amount thus forgiven, which for all purposes shall be considered a part of the grant and of the Federal portion of the cost of the project. An applicant for assistance under this subsection shall furnish a copy of its application to the comprehensive planning agency of the community affected concurrently with submission to the Secretary. If within a period of thirty days thereafter (or, in a case where the comprehensive planning agency of the community (during such thirty-day period) requests more time, within such longer period as the Secretary may determine) the comprehensive planning agency of the community affected submits comments to the Secretary, the Secretary must consider the comments before taking final action on the application.

(c) Loan restrictions and limitations; interest

No loans shall be made under this section for any project for which a grant is made under this section, except—

(1) loans may be made for projects as to which grants are made for relocation payments; and

(2) project grants may be made even though the real property involved in the project has been or will be acquired as a result of a loan under subsection (b) of this section.

Interest on loans made under this section shall be at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans adjusted to the nearest one-eighth of 1 per centum, plus (ii) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs and probable losses under the program. No loans shall be made, including renewals on extensions thereof, and no securities or obligations shall be purchased, which have maturity dates in excess of forty years.

(d) Notice and public hearings

Any application for a grant or loan under this chapter to finance the acquisition, construction, reconstruction, or improvement of facilities or equipment which will substantially affect a community or its mass transportation service shall include a certification that the applicant—

(1) has afforded an adequate opportunity for public hearings pursuant to adequate prior notice, and has held such hearings unless no one with a significant economic, social, or environmental interest in the matter requests a hearing;

(2) has considered the economic and social effects of the project and its impact on the environment; and

(3) has found that the project is consistent with official plans for the comprehensive development of the urban area.

Notice of any hearings under this subsection shall include a concise statement of the proposed project, and shall be published in a newspaper of general circulation in the geographic area to be served. If hearings have been held, a copy of the transcript of the hearings shall be submitted with the application.

(e) Private transit operators

No financial assistance shall be provided under this chapter to any State or local public body or agency thereof for the purpose, directly or indirectly, of acquiring any interest in, or purchasing any facilities or other property of, a private mass transportation company, or for the purpose of constructing, improving, or reconstructing any facilities or other property acquired (after July 9, 1964) from any such company, or for the purpose of providing by contract or otherwise for the operation of mass transportation facilities or equipment in competition with, or supplementary to, the service provided by an existing mass transportation company, unless (1) the Secretary finds that such assistance is essential to a program, proposed or under active preparation, for a unified or officially coordinated urban transportation system as part of the comprehensively planned development of the urban area, (2) the Secretary finds that such program, to the maximum extent feasible, provides for the participation of private mass transportation companies, (3) just and adequate compensation will be paid to such companies for acquisition of their franchises or property to the extent required by applicable State or local laws, and (4) the Secretary of Labor certifies that such assistance complies with the requirements of section 1609(c) of this title.

(f) Purchase or operation of buses

No Federal financial assistance under this chapter may be provided for the purchase or operation of buses unless the applicant or any public body receiving such assistance for the purchase or operation of buses, or any publicly owned operator receiving such assistance, shall as a condition of such assistance enter into an agreement with the Secretary that such public body, or any operator of mass transportation for such public body, will not engage in charter bus operations outside the urban area within which it provides regularly scheduled mass transportation service, except as provided in the agreement authorized by this subsection. Such agreement shall provide for fair and equitable arrangements, appropriate in the judgment of the Secretary, to assure that the financial assistance granted under this chapter will not enable public bodies and publicly and privately owned operators for public bodies to foreclose private operators from the intercity charter bus industry where such private operators are willing and able to provide such service. In addition to any other remedies specified in the agreement, the Secretary shall have the authority to bar a grantee or operator from the receipt of further financial assistance for mass transportation facilities and equipment where he determines that there has been a continuing pattern of violations of the terms of agreement. Upon receiving a complaint regarding an alleged violation, the Secretary shall investigate and shall determine whether a violation has occurred. Upon determination that a violation has occurred, he shall take appropriate action to correct the violation under the terms and conditions of the agreement.

(g) Schoolbus operations

No Federal financial assistance shall be provided under this chapter for the construction or operation of facilities and equipment for use in providing public mass transportation service to any applicant for such assistance unless such applicant and the Secretary shall have first entered into an agreement that such applicant will not engage in schoolbus operations, exclusively for the transportation of students and school personnel, in competition with private schoolbus operators. This subsection shall not apply to an applicant with respect to operation of a schoolbus program if the applicant operates a school system in the area to be served and operates a separate and exclusive schoolbus program for this school system. This subsection shall not apply unless private schoolbus operators are able to provide adequate transportation, at reasonable rates, and in conformance with applicable safety standards; and this subsection shall not apply with respect to any State or local public body or agency thereof if it (or a direct predecessor in interest from which it acquired the function of so transporting schoolchildren and personnel along with facilities to be used therefor) was so engaged in schoolbus operations any time during the twelve-month period immediately prior to November 26, 1974. A violation of an agreement

under this subsection shall bar such applicant from receiving any other Federal financial assistance under this chapter.

(h) Alternate use of financial assistance for payment of operating expenses; maximum amount; terms and conditions

Notwithstanding any other prqvision of this chapter, or of any contract or agreement entered into under this chapter, up to one-half of any financial assistance provided under this chapter (other than under section 1604 of this title) to any State or local public body or agency thereof for the fiscal year 1975 or any subsequent fiscal year may, at the option of such State or local public body or agency, be used exclusively for the payment of operating expenses (incurred in connection with the provision of mass transportation service in an urban area or areas) to improve or to continue such service, if the Secretary finds (in any case where the financial assistance to be so used was originally provided for another project) that effective arrangements have been made to substitute and, by the end of the fiscal year following the fiscal year for which such sums are used, make available (for such other project) an equal amount of State or local funds (in addition to any State or local funds otherwise required by this chapter to be contributed toward the cost of such project). Any amounts used for the payment of operating expenses pursuant to this subsection shall be subject to such terms and conditions (including the requirement for local matching contributions), required for the payment of operating expenses under other provisions of this chapter, as the Secretary may deem necessary and appropriate.

(Pub. L. 88-365, § 3, July 9, 1964, 78 Stat. 303; Pub. L. 89-562, § 2(b)(1), Sept. 8, 1966, 80 Stat. 716; Pub. L. 90-19, § 20(a), May 25, 1967, 81 Stat. 25; Pub. L. 91-453, § 2, Oct. 15, 1970, 84 Stat. 962; Pub. L. 93-383, title VIII, § 813(a), Aug. 22, 1974, 88 Stat. 737; Pub. L. 93-503, title I, §§ 102, 104, 106, 109, 110, Nov. 26, 1974, 88 Stat. 1566, 1571-1573; Pub. L. 93-650, § 1(a), Jan. 4, 1974, 89 Stat. 2-1.)

CODIFICATION

Subsec. (f) of this section was originally added by H.R. 10511, 93rd Congress, 1st Session, which was pocket-vetoed during the intersession adjournment of the 93rd Congress in January, 1974. Later, during the second session of the 93rd Congress, Pub. L. 93-383 was passed containing provisions identical to those of the vetoed H.R. 10511. See 1974 Amendment note below.

Pursuant to an order of the United States District Court for the District of Columbia (*Kennedy* v. *Jones*, D.C.D.C. 1976, 412 F. Supp. 353) H.R. 10511 was deemed to have become law without the approval of the President on Jan. 4, 1974, and was given the designation Pub. L. 93-650. Therefore, for purposes of codification, this section should be deemed to have been amended by Pub. L. 93-650, § 1(a), Jan. 4, 1974, 89 Stat. 2-1, which added subsec. (f) of this section.

AMENDMENTS

1974—Subsec. (a)(1). Pub. L. 93-503, §§ 102(1) to (3), 104, 106, redesignated existing provisions as subsec. (a)(1), and, as so redesignated, designated existing provisions as cl. (1) and added cl. (2), redesignated former cls. (1) and (2) as (A) and (B), respectively, added provisions relating to requirements for eligible facilities and equipment with respect to their placement within the zone affected by construction and operation of transit improvements and compatibility with land use patterns and provisions prohibiting use of grant or loan fund to support procurements utilizing exclusionary or discriminatory specifications, and struck out provisions relating to submission of applications for assistance to Governors of affected States and comments upon applications by such Governors to the Secretary.

Subsec. (a)(2). Pub. L. 93-503, § 102(4), added subsec. (a)(2).

Subsec. (f). Pub. L. 93-503, § 109(b), added "or operation" following "purchase".

Pub. L. 93-383 added subsec. (f). See Codification note above.

Subsec. (g). Pub. L. 93-503, § 109(a), added subsec. (g).

Subsec. (h). Pub. L. 93-503, § 110, added subsec. (h).

1970—Subsec. (a). Pub. L. 91-453, § 2(2), added provisions authorizing the Secretary to make loans for real property acquisition upon a determination that such real property is reasonably expected to be required in connection with a mass transportation system and that it would be used for such purpose in a reasonable time and requiring applicants for such assistance for projects located in States having statewide comprehensive transportation planning to furnish copies of the application to the Governors of the respective States and to the Secretary and requiring the Secretary to consider the comments of the Governors before a determination, if submitted to him within thirty days.

Subsec. (b). Pub. L. 91-453, § 2(2), added subsec. (b). Former subsec. (b) amended redesignated as subsec. (c).

Subsec. (c). Pub. L. 91-453, § 2(2), redesignated former subsec. (b) as subsec. (c), and in subsec. (c) as so redesignated, substituted provisions prohibiting loans for the same project, except for relocation payments and for real property acquired with a loan, for provisions restricting loans by reference to section 1606 of this title and sections 1492 and 1493 of Title 42, added a new formula for the determination of interest on loans, and laid down the maximum date for maturity at forty years.

Subsec. (d). Pub. L. 91-453, § 2(2), added subsec. (d).

Subsec. (e). Pub. L. 91-453, § 2(1), redesignated former subsec. (c) as subsec. (e).

1967—Pub. L. 90-19 substituted "Secretary" for "Administrator" wherever appearing in subsecs. (a) to (c) of this section.

1966—Subsec. (c). Pub. L. 89-562 substituted reference to "section 13(c)" of Pub. L. 88-365 for reference to "section 10(c)" of Pub. L. 88-365 pursuant to the redesignation of section 10 as section 13 by Pub. L. 89-562. Since "section 10(c) of this Act" was translated to "section 1609(c) of this title" for purposes of codification, and since "section 13(c) of this Act" also translated as "section 1609(c) of this title", the amendment produced no change in the text as codified.

TRANSFER OF FUNCTIONS

Transfer to the Secretary of Transportation of functions of the Department of Housing and Urban Development and of the Secretary of Housing and Urban Development under this chapter, except the authority to make grants for or undertake projects or activities under sections 1605(a), 1607a, and 1607c of this title as primarily concern the relationship of urban transportation systems to the comprehensive planned development of urban areas or the role of transportation planning in overall urban planning and the functions under this section and sections 1603 and 1604 of this title required to enable the Secretary of Housing and Urban Development to advise and assist the Secretary of Transportation to make findings and determinations under subsec. (c)(1) of this section and sections 1603(a) and 1604 of this title and to establish jointly with the Secretary of Transportation the criteria referred to in the first sentence of section 1603(a) of this title, see Reorg. Plan No. 2 of 1968, eff. June 30, 1968,

33 F.R. 6965, 82 Stat. 1369, set out under section 1608 of this title.

STUDY AND REPORT ON FEASIBILITY OF FEDERAL ASSISTANCE TO MASS TRANSPORTATION COMPANIES

Section 9 of Pub. L. 91-453 required the Secretary of Transportation to conduct a study of the feasibility of providing Federal assistance to help defray the operating costs of mass transportation companies in urban areas and of any changes in this chapter which would be necessary in order to provide such assistance, and to report his findings and recommendations to the Congress within one year after Oct. 15, 1970.

ENCOURAGEMENT OF ADVERSELY AFFECTED INDUSTRIES TO COMPETE FOR CONTRACTS

Section 10 of Pub. L. 91-453 provided that: "The Secretary of Transportation shall in all ways (including the provision of technical assistance) encourage industries adversely affected by reductions in Federal Government spending on space, military, and other Federal projects to compete for the contracts provided for under sections 3 and 6 of the Urban Mass Transportation Act of 1964 (49 U.S.C. 1602 and 1605), as amended by this Act [see Short Title of 1970 Amendment note under section 1601 of this title]."

TAXATION STUDIES OF SYSTEMS BENEFITING UNDER THIS CHAPTER

Pub. L. 88-554, § 3, Aug. 31, 1964, 78 Stat. 761, authorized and directed the Secretary of Commerce to investigate and study the feasibility of imposing taxes on those transit and commuter systems which are the beneficiaries of Federal financial assistance under this chapter for the purpose of raising revenues to defray Federal expenditures under this chapter; authorized the Secretary of Commerce, in making the investigation and study, to cooperate and consult with appropriate Federal, State, and local govenment agencies, and with representatives of the transit and commuter service industry and national organizations concerned with mass transportation service; required the costs of making the investigation and study to be paid from appropriations available for expenses of the Office of the Secretary of Commerce; and required the Secretary of Commerce to report the results of the investigation and study, together with his recommendations, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives at the earliest practicable date, but not later than June 30, 1965.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1602a, 1603, 1604, 1606, 1608, 1609, 1610, 1612 of this title; title 23 sections 103, 142; title 42 sections 3303, 3338, 4519.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in sections 1-1463, 1-1464, 1-1465 of the District of Columbia Code.

§ 1602a. Federal financial assistance agreements

(a) Assistance for bus purchases subject to agreement against charter bus operations outside of regularly scheduled mass transportation service area; exceptions

No Federal financial assistance shall be provided under (1) subsection (a) or (c) of section 142, title 23, or (2) paragraph (4) of subsection (e) of section 103, title 23, for the purchase of buses to any applicant for such assistance unless such applicant and the Secretary of Transportation shall have first entered into an agreement that such applicant will not engage in charter bus operations outside of the urban area (or areas) within which it provides regularly scheduled mass transportation service, except as provided in an agreement authorized and required by section 1602(f) of this title, which section shall apply to Federal financial assistance for the purchase of buses under the provisions of title 23 referred to in clauses (1) and (2) of this sentence.

(b) Assistance for bus purchases subject to agreement against competitive school bus operations with private school bus operators; nonapplication of restriction under certain circumstances

No Federal financial assistance shall be provided under (1) subsection (a) or (c) of section 142, title 23, (2) paragraph (4) of subsection (e) of section 103, title 23, or (3) this chapter, for the purchase of buses to any applicant for such assistance unless such applicant and the Secretary of Transportation shall have first entered into an agreement that such applicant will not engage in school bus operations, exclusively for the transportation of students and school personnel, in competition with private school bus operators. This subsection shall not apply to an applicant with respect to operation of a school bus program if the applicant operates a school system in the area to be served and operates a separate and exclusive school bus program for this school system. This subsection shall not apply unless private school bus operators are able to provide adequate transportation, at reasonable rates, and in conformance with applicable safety standards, and this subsection shall not apply with respect to any State or local public body or agency thereof if it (or a direct predecessor in interest from which it acquired the function of so transporting school children and personnel along with facilities to be used therefor) was so engaged in school bus operations any time during the twelve-month period immediately prior to August 13, 1973. A violation of an agreement under this subsection shall bar such applicant from receiving any other Federal financial assistance under those provisions of law referred to in clauses (1), (2), and (3) of this subsection.

(Pub. L. 93-87, title I, § 164, Aug. 13, 1973, 87 Stat. 281; Pub. L. 93-383, title VIII, § 813(b), Aug. 22, 1974, 88 Stat. 737; Pub. L. 93-650, § 1(b), Jan. 4, 1974, 89 Stat. 2-1.)

CODIFICATION

Section was not enacted as part of Pub. L. 88-365, July 9, 1964, 78 Stat. 302, known as the Urban Mass Transportation Act of 1964, which comprises this chapter.

Subsec. (a) of this section was originally amended and provisions set out as a note under this section were originally enacted by H.R. 10511, 93rd Congress, 1st Session, which was pocket-vetoed during the intersession adjournment of the 93rd Congress in January, 1974. Later, during the second session of the 93rd Congress, Pub. L. 93-383 was passed containing provisions identical to those of the vetoed H.R. 10511. See 1974 Amendment note set out below.

Pursuant to an order of the United States District Court for the District of Columbia (*Kennedy* v. *Jones*, D.C.D.C. 1976, 412 F. Supp. 353) H.R. 10511 was deemed to have become law without the approval of the President on Jan. 4, 1974, and was given the designation Pub. L. 93-650. Therefore, for purposes of codification, this section should be deemed to have been amended by Pub. L. 93-650, § 1(b), Jan. 4, 1974, 89 Stat. 2-1, which amended subsec. (a) of this section.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-383 struck out cl. (3) which related to Federal financial assistance provided under this chapter, and substituted provisions requiring agreements to provide that applicants will not engage in charter bus operations outside of urban areas within which regularly scheduled mass transportation is provided, except as specifically authorized, for provisions requiring agreements to provide that applicants will not engage in charter bus operations in competition with private bus operators outside of the area the applicant provides regularly scheduled mass transportation service, and provisions requiring violations of the agreement to bar applicants from receiving any other Federal financial assistance.

AMENDMENT OF AGREEMENTS TO CONFORM TO AMENDMENTS BY PUB. L. 93-650; EFFECTIVE DATE OF AMENDED AGREEMENTS

Section 2 of Pub. L. 93-650 provided that: "The Secretary shall amend any agreements entered into pursuant to section 164a of the Federal-Aid Highway Act of 1973, Public Law 93-87 [subsec. (a) of this section], to conform to the requirements of section 1 of this Act [amending subsec. (a) of this section and section 1602 of this title]. The effective date of such conformed agreements shall be the effective date of the original agreements entered into pursuant to section 164a [subsec. (a) of this section]."

[An identical provision is contained in section 813(c) of Pub. L. 93-383, set out below.]

AMENDMENT OF AGREEMENTS TO CONFORM TO AMENDMENTS BY PUB. L. 93-383; EFFECTIVE DATE OF AMENDED AGREEMENTS

Section 813(c) of Pub. L. 93-383 provided that: "The Secretary shall amend any agreements entered into pursuant to section 164(a) of the Federal-Aid Highway Act of 1973 [subsec. (a) of this section], to conform to the requirements of the amendments made by this section [to subsec. (a) of this section and section 1602(f) of this title]. The effective date of such conformed agreements shall be the effective date of the original agreements entered into pursuant to such section 164(a) [subsec. (a) of this section]."

§ 1603. Long-range program

(a) Terms and conditions; planning requirements; "net project cost" defined; Federal grant for two-thirds and non-Federal funds for one-third of net project cost; refunds

No Federal financial assistance shall be provided pursuant to subsection (a) of section 1602 of this title unless the Secretary determines that the facilities and equipment for which the assistance is sought are needed for carrying out a program, meeting criteria established by him, for a unified or officially coordinated urban transportation system as a part of the comprehensively planned development of the urban area, and are necessary for the sound economic, and desirable development of such area. Such program shall encourage to the maximum extent feasible the participation of private enterprise. Where facilities and equipment are to be acquired which are already being used in mass transportation service in the urban area, the program must provide that they shall be so improved (through modernization, extension, addition, or otherwise) that they will better serve the transportation needs of the area. The Secretary, on the basis of engineering studies, studies of economic feasibility, and data showing the nature and extent of expected utilization of the facilities and equipment, shall estimate what portion of the cost of a project to be assisted under section 1602 of this title cannot be reasonably financed from revenues—which portion shall hereinafter be called "net project cost". The Federal grant for any such project to be assisted under section 1602 of this title shall be in an amount equal to 80 per centum of the net project cost. The remainder of the net project cost shall be provided, in cash from sources other than Federal funds. Such remainder may be provided in whole or in part from other than public sources and any public or private transit system funds so provided shall be solely from undistributed cash surpluses, replacement or depreciation funds or reserves available in cash, or new capital. No refund or reduction of the remainder of the net project cost shall be made at any time unless there is at the same time a refund of a proportional amount of the Federal grant.

(b) Appropriations; advance or progress payments

To finance grants under this chapter there is hereby authorized to be appropriated at any time after July 9, 1964 not to exceed $75,000,000 for fiscal year 1965; $150,000,000 for fiscal year 1966; $150,000,000 for each of the fiscal years 1967, 1968 and 1969; $190,000,000, for fiscal year 1970; and $300,000,000 for fiscal year 1971. Any amount so appropriated shall remain available until expended; and any amount authorized but not appropriated for any fiscal year may be appropriated for any succeeding fiscal year. The Secretary is authorized, notwithstanding the provisions of section 529 of title 31, to make advance or progress payments on account of any grant or contract made pursuant to this chapter.

(c) Additional appropriations

To finance grants and loans under sections 1602, 1606(b), and 1607a of this title, the Secretary is authorized to incur obligations on behalf of the United States in the form of grant agreements or otherwise in amounts aggregating not to exceed $10,925,000,000, less amounts appropriated pursuant to section 1608(d) of this title and the amount appropriated to the Urban Mass Transportation Fund by Public Law 91-168. This amount (which shall be in addition to any amounts available to finance such activities under subsection (b) of this section) shall become available for obligation on October 15, 1970, and shall remain available until obligated. There are authorized to be appropriated for liquidation of the obligations incurred under this subsection not to exceed $80,000,000 prior to July 1, 1971, which amount may be increased to not to exceed an aggregate of $6,100,000,000 prior to July 1, 1972, not to exceed an aggregate of $710,000,000 prior to July 1, 1973, not to exceed an aggregate of $1,260,000,000 prior to July 1, 1974, not to exceed an aggregate of $1,860,000,000 prior to July 1, 1975, and not to exceed an aggregate of $3,100,000,000 thereafter. The total amounts appropriated under this subsection and section 1608(d) of this title shall not exceed the limitations in the foregoing schedule. Sums so appropriated shall remain available until expended. Of the total amount available to finance activities under this chapter (other than under section 1604 of this title) on and after November 26, 1974, not to exceed $500,000,000 shall be available exclusively for

assistance in areas other than urbanized areas (as defined in section 1604(a)(3) of this title).

(d) Annual reports to Congress

The Secretary shall report annually to the Congress with respect to outstanding grants or other contractual agreements executed pursuant to subsection (c) of this section.

(Pub. L. 88-365, § 4, July 9, 1964, 78 Stat. 304; Pub. L. 89-562, § 1(a), Sept. 8, 1966, 80 Stat. 715; Pub. L. 90-19, § 20(a), May 25, 1967, 81 Stat. 25; Pub. L. 90-448, title VII, §§ 701(a), 704(a), Aug. 1, 1968, 82 Stat. 534, 535; Pub. L. 91-152, title III, § 306(a), Dec. 24, 1969, 83 Stat. 392; Pub. L. 91-453, §§ 3, 13(a), Oct. 15, 1970, 84 Stat. 965, 969; Pub. L. 93-87, title III, § 301(a), (c), Aug. 13, 1973, 87 Stat. 295; Pub. L. 93-503, title I, §§ 101, 103(b), Nov. 26, 1974, 88 Stat. 1566, 1571; Pub. L. 93-608, § 1(21), Jan. 2, 1975, 88 Stat. 1970.)

REFERENCES IN TEXT

Pub. L. 91-168, referred to in subsec. (c), is Pub. L. 91-168, Dec. 26, 1969, 83 Stat. 454, known as the Department of Transportation and Related Agencies Appropriation Act, 1970. Provisions of Pub. L. 91-168 relating to the amount appropriated to the Urban Mass Transportation Fund were not classified to the Code.

AMENDMENTS

1975—Subsec. (d). Pub. L. 93-608 struck out provisions relating to biennial authorization requests by the Secretary to the Congress and provisions relating to recommendations by the Secretary of adjustments in the schedule for liquidation of obligations.

1974—Subsec. (a). Pub. L. 93-503, § 103(b), substituted "No" for "Except as specified in section 1604 of this title, no".

Subsec. (c). Pub. L. 93-503, § 101, substituted "$10,925,000,000" for "$6,100,000,000" in the first sentence and added provision relating to availability of funds exclusively for assistance in areas other than urbanized areas, as defined in section 1604(a)(3) of this title.

1973—Subsec. (a). Pub. L. 93-87, § 301(a), substituted fifth sentence reading "The Federal grant for any such project to be assisted under section 1602 of this title shall be in an amount equal to 80 per centum of the net project cost." for "The Federal grant for such a project should not exceed two-thirds of the net project cost."

Subsec. (c). Pub. L. 93-87, § 301(c), substituted "$6,100,000,000" for "$3,100,000,000" in first and third sentences.

1970—Subsec. (a). Pub. L. 91-453, § 3(a), substituted reference to section 1602(a) for reference to section 1602 in the first sentence and provided that all or any part of the local share of "net project cost" may come from other than public sources and that any public or private transit system funds received must be solely from undistributed cash surpluses, replacement or depreciation funds or reserves available in cash, or new capital, and eliminated requirement that a determination be made of the "fiscal inability" of the applicant when more than 50 percent of the local share was provided from the specified sources.

Subsec. (b). Pub. L. 91-453, § 13(a), extended the authority of the Secretary to make advance or progress payments on account of contracts.

Subsecs. (c), (d). Pub. L. 91-453, § 3(b), added subsecs. (c) and (d).

1969—Subsec. (b). Pub. L. 91-152 authorized appropriations of $300,000,000 for fiscal year 1971.

1968—Subsec. (a). Pub. L. 90-448, § 704(a), authorized not more than 50 per centum of the remainder of the net project cost to be provided from other than public sources, and any public or private transit system funds to be provided solely from undistributed cash surpluses, replacement or depreciation funds or reserves available in cash, or new capital, except that in the cases of demonstrated fiscal inability of an applicant actively engaged in preparing and effectuating a program for a unified or officially coordinated urban transportation system as part of the comprehensively planned development of the urban area, the remainder may be provided from other than public sources.

Subsec. (b). Pub. L. 90-448, § 701(a), authorized appropriations of $190,000,000 for fiscal year 1970.

1967—Pub. L. 90-19 substituted "Secretary" for "Administrator" wherever appearing in subsecs. (a) and (b) of this section.

1966—Subsec. (b). Pub. L. 89-562 authorized appropriations of $150,000,000 for each of the fiscal years 1968 and 1969.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 301(b) of Pub. L. 93-87 provided that: "The amendment made by subsection (a) [to subsec. (a) of this section] shall apply only with respect to projects which were not subject to administrative reservation on or before July 1, 1973."

TRANSFER OF FUNCTIONS

Transfer to the Secretary of Transportation of functions of the Department of Housing and Urban Development and of the Secretary of Housing and Urban Department under this chapter, except the authority to make grants for or undertake projects or activities under sections 1605(a), 1607a, and 1607c of this title as primarily concern the relationship of urban transportation systems to the comprehensive planned development of urban areas or the role of transportation planning in overall urban planning and the functions under this section and sections 1602 and 1604 of this title required to enable the Secretary of Housing and Urban Development to advise and assist the Secretary of Transportation to make findings and determinations under subsec. (a) of this section and sections 1602(c)(1) and 1604 of this title and to establish jointly with the Secretary of Transportation the criteria referred to in the first sentence of subsec. (a) of this section, see Reorg. Plan No. 2 of 1968, eff. June 30, 1968, 33 F.R. 6965, 82 Stat. 1369, set out under section 1608 of this title.

POLITICAL ACTIVITY OF STATE AND LOCAL EMPLOYEES; NONAPPLICATION OF PROVISIONS TO NONSUPERVISORY EMPLOYEES OF URBAN MASS TRANSPORTATION SYSTEM

Section 301(e) of Pub. L. 93-87 provided that: "The provision of assistance under the amendments made by this section [to subsecs. (a) and (c) of this section and sections 1607a, 1608(f), and 1612(b) of this title] shall not be construed as bringing within the application of chapter 15 of title 5, United States Code, any nonsupervisory employee of an urban mass transportation system (or of any other agency or entity performing related functions) to whom such chapter is otherwise inapplicable."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1604, 1605, 1607b, 1607c, 1612 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in sections 1-1464, 1-1465 of the District of Columbia Code.

§ 1604. Urban mass transit grant program

(a) Definitions

As used in this section—

(1) the term "construction" means the supervising, inspecting, actual building, and all expenses incidental to the acquisition, construction, or reconstruction of facilities and equipment for use in mass transportation, including designing, engineering, locating, surveying, mapping, acquisition of rights-of-way,

relocation assistance, and acquisition and replacement of housing sites;

(2) the term "Governor" means the Governor, or his designate, of any one of the fifty States or of Puerto Rico, and the Mayor of the District of Columbia; and

(3) the term "urbanized area" means an area so designated by the Bureau of the Census, within boundaries which shall be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary, and which shall at a minimum, in the case of any such area, encompass the entire urbanized area within the State as designated by the Bureau of the Census.

(b) Apportionment of funds; formula; density of population factor; designated recipient of apportioned funds to receive and dispense funds; availability of funds not expended by designated recipients

(1) The Secretary shall apportion for expenditure in fiscal years 1975 through 1980 the sums authorized by subsection (c) of this section. Such sums shall be made available for expenditure in urbanized areas or parts thereof on the basis of a formula under which urbanized areas or part thereof will be entitled to receive an amount equal to the sum of—

(A) one-half of the total amount so apportioned multiplied by the ratio which the population of such urbanized area or part thereof, as designated by the Bureau of the Census, bears to the total population of all the urbanized areas in all the States as shown by the latest available Federal census; and

(B) one-half of the total amount so apportioned multiplied by a ratio for that urbanized area determined on the basis of population weighted by a factor of density, as determined by the Secretary.

As used in the preceding sentence, the term "density" means the number of inhabitants per square mile.

(2) The Governor, responsible local officials and publicly-owned operators of mass transportation services, in accordance with the procedures required under subsection (g)(1) of this section with the concurrence of the Secretary, shall designate a recipient to receive and dispense the funds apportioned under paragraph (1) that are attributable to urbanized areas of two hundred thousand or more population. In any case in which a statewide or regional agency or instrumentality is responsible under State laws for the financing, construction and operation directly, by lease, contract, or otherwise, of public transportation services, such agency or instrumentality shall be the recipient to receive and dispense such funds. The term "designated recipient" as used in this chapter shall refer to the recipient selected according to the procedures required by this paragraph.

(3) Sums apportioned under paragraph (1) not made available for expenditure by designated recipients in accordance with the terms of paragraph (2) shall be made available to the Governor for expenditure in urbanized areas or parts thereof in accordance with the procedures required under subsection (g)(1) of this section.

(c) Grant, contract, etc., obligations for financing grants; maximum amount; authorization of appropriations for liquidation of obligations; availability of appropriations; availability of apportioned sums for obligation; return to Treasury of unobligated apportioned amounts

(1) To finance grants under this section, the Secretary may incur obligations on behalf of the United States in the form of grants, contracts, agreements, or otherwise in an aggregate amount not to exceed $3,975,000,000. There are authorized to be appropriated for liquidation of the obligations incurred under this paragraph not to exceed $300,000,000 prior to the close of fiscal year 1975; not to exceed $500,000,000 prior to the close of fiscal year 1976; not to exceed $650,000,000 prior to the close of fiscal year 1977; not to exceed $775,000,000 prior to the close of fiscal year 1978; not to exceed $850,000,000 prior to the close of fiscal year 1979; and not to exceed $900,000,000 prior to the close of fiscal year 1980. Sums so appropriated shall remain available until expended.

(2) Sums apportioned under this section shall be available for obligation by the Governor or designated recipient for a period of two years following the close of the fiscal year for which such sums are apportioned, and any amounts so apportioned remaining unobligated at the end of such period shall lapse and shall be returned to the Treasury for deposit as miscellaneous receipts.

(d) Approval of projects for acquisition, construction, and improvement of facilities and equipment, and payment of operating expenses; terms and conditions; regulations

(1) The Secretary may approve as a project under this section, on such terms and conditions as he may prescribe, (A) the acquisition, construction, and improvement of facilities and equipment for use, by operation or lease or otherwise, in mass transportation service, and (B) the payment of operating expenses to improve or to continue such service by operation, lease, contract, or otherwise.

(2) The Secretary shall issue such regulations as he deems necessary to administer this subsection and subsection (e) of this section including regulations regarding maintenance of effort by States, local governments, and local public bodies, the appropriate definition of operating expenses, and requirements for improving the efficiency of transit services.

(e) Limitation on amount of grants for construction and operating expense projects; source of remainder of funds for projects

The Federal grant for any construction project under this section shall not exceed 80 per centum of the cost of the construction project, as determined under section 1603(a) of this title. The Federal grant for any project for the payment of subsidies for operating expenses shall not exceed 50 per centum of the cost of such operating expense project. The remainder shall be provided in cash, from sources other than Federal funds or revenues from the operation of public mass transportation systems. Any public or private transit system funds so provided shall be solely from undistributed cash surpluses, replacement or depreciation

funds or reserves available in cash, or new capital.

(f) Federal funds available for expenditure for projects supplementary to average amount of State and local government funds, etc., expended for operations; State and local tax revenues expended for operations credited to non-Federal share of project costs

Federal funds available for expenditure for mass transportation projects under this section shall be supplementary to and not in substitution for the average amount of State and local government funds and other transit revenues such as advertising, concessions, and property leases, expended on the operation of mass transportation service in the area involved for the two fiscal years preceding the fiscal year for which the funds are made available; but nothing in this sentence shall be construed as preventing State or local tax revenues which are used for the operation of mass transportation service in the area involved from being credited (to the extent necessary) toward the non-Federal share of the cost of the project for purposes of the preceding sentence.

(g) Development of plans and programs of transportation systems for urbanized areas; scope and implementation of projects; cutoff date for approval of projects; submission by Governor or designated recipient and approval by Secretary of program of projects for utilization of funds; consideration and comments on programs

(1) It is declared to be in the national interest to encourage and promote the development of transportation systems, embracing various modes of transport in a manner that will serve the States and local communities efficiently and effectively. To accomplish this objective the Secretary shall cooperate with the States in the development of long-range plans and programs which are properly coordinated with plans for improvement in other affected forms of transportation and which are formulated with due consideration to their probable effect on the future development of urban areas of more than fifty thousand population. The development of projects in urbanized areas under this section shall be based upon a continuing, cooperative, and comprehensive planning process covering all modes of surface transportation and carried on by the States and the governing bodies of local communities in accordance with this paragraph. The Secretary shall not approve any project in an urbanized area after July 1, 1976, under this section unless he finds that such project is based on a continuing comprehensive transportation planning process carried on in conformance with the objectives stated in this paragraph.

(2) The Governor or designated recipient shall submit to the Secretary for his approval a program of projects for utilization of the funds authorized, which shall be based on the continuing comprehensive planning process of paragraph (1). The Secretary shall act upon programs submitted to him as soon as practicable, and he may approve a program in whole or in part.

(3) An applicant for assistance under this section (other than a Governor) shall submit the program or programs to the Governor of the State affected, concurrently with submission to the Secretary. If within thirty days thereafter the Governor submits comments to the Secretary, the Secretary shall consider such comments before taking final action on the program or programs.

(h) Submission by Governor or designated recipient and approval by Secretary of surveys, plans, etc., of proposed projects; grant or contract agreement as contractual obligation of Federal government; criteria for approval of projects

(1) The Governor or the designated recipient of the urbanized area shall submit to the Secretary for his approach[1] such surveys, plans, specifications, and estimates for each proposed project as the Secretary may require. The Secretary shall act upon such surveys, plans, specifications, and his entering into a grant or contract agreement with respect to any such project shall be a contractual obligation of the Federal Government for the payment of its proportional contribution thereto.

(2) In approving any project under this section, the Secretary shall assure that possible adverse economic, social, and environmental effects relating to the proposed project have been fully considered in developing the project, and that the final decisions on the project are made in the best overall public interest, taking into consideration the need for fast, safe, and efficient transportation, public services, and conservation of environment and natural resources, and the costs of eliminating or minimizing any such adverse effects, including—

(A) air, noise, and water pollution;

(B) destruction or disruption of manmade and natural resources, esthetic values, community, cohesion, and the availability of public facilities and services;

(C) adverse employment effects, and tax and property value losses;

(D) injurious displacement of people, businesses, and farms; and

(E) disruption of desirable community and regional growth.

(i) Certification by Governor or designated recipient to Secretary of compliance with procedures for determination of environmental, etc., impact of proposed projects; report

Upon submission for approval of a proposed project under this section, the Governor or the designated recipient of the urbanized area shall certify to the Secretary that he or it has conducted public hearings (or has afforded the opportunity for such hearings) and that these hearings included (or were scheduled to include) consideration of the economic and social effects of such project, its impact on the environment, including requirements udner the Clean Air Act [42 U.S.C. 1857 et seq.], the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], and other applicable Federal environmental statutes, and its consistency with the goals and objectives of such urban planning as has been promulgated by the community. Such certification shall be accompanied by (1) a report which indicates the consideration given to the economic, social, environmental, and other effects of the proposed project, including,

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[1] So in original. Probably should be "approval".

for construction projects, the effects of its location or design, and the consideration given to the various alternatives which were raised during the hearing or which were otherwise considered, and (2) upon the Secretary's request, a copy of the transcript of the hearings.

(j) Acceptance of certification as discharge of Secretary's responsibilities; final inspection or review and report of projects; guidelines and regulations; rescission of acceptance of certification; Secretary's responsibilities under other Federal laws not affected.

(1) The Secretary may discharge any of his responsibilities under this action[1] with respect to a project under this section upon the request of any Governor or designated recipient of the urbanized area by accepting a certification by the Governor or his designee, or by the designated recipient of the urbanized area, if he finds that such project will be carried out in accordance with State laws, regulations, directives, and standards establishing requirements at least equivalent to those contained in, or issued pursuant to, this section.

(2) The Secretary shall make a final inspection or review of each such project upon its completion and shall require an adequate report of its estimated and actual cost, as well as such other information as he determines to be necessary.

(3) The Secretary shall promulgate such guidelines and regulations as may be necessary to carry out this subsection.

(4) Acceptance by the Secretary of a certification under this section may be rescinded by the Secretary at any time if, in his opinion, it is necessary to do so.

(5) Nothing in this section shall affect or discharge any responsibility or obligation of the Secretary under any other Federal law, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), section 4(f) of the Department of Transportation Act (49 U.S.C. 1653(f)), title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], title VIII of the Act of April 11, 1968 (Public Law 90-284, 42 U.S.C. 3601 et seq.), and the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

(k) Formal project agreements between Secretary and Governor or designated recipient; arrangements for local funding or cooperation in construction of project; advance grant or contract payments

(1) As soon as practicable after the plans, specifications, and estimates for a specific project under this section have been approved, the Secretary shall enter into a formal project agreement with the Governor, his designee or the designated recipient of the urbanized area. Such project agreement shall make provision for non-Federal funds required for the State's or designated recipient's pro rata share of the cost of the project.

(2) The Secretary may rely upon representations made by the applicant with respect to the arrangements or agreements made by the Governor or the designated recipient where a part of the project involved is to be constructed at the expense of, or in cooperation with, local subdivisions of the State.

(3) The Secretary is authorized, notwithstanding the provisions of section 529 of title 31, to make advance or progress payments on account of any grant or contract made pursuant to this section, on such terms and conditions as he may prescribe.

(l) Criteria for approval and undertaking of projects

The Secretary shall not approve any project under this section unless he finds that such project is needed to carry out a program, meeting criteria established by him, for a unified or officially coordinated urban transportation system as a part of the comprehensively planned development of the urban area, and is necessary for the sound, economic, and desirable development of such area, and that the applicant or responsible agency has the legal, financial, and technical capacity to carry out the proposed project. A project under this section may not be undertaken unless the responsible public officials of the urbanized area in which the project is located have been consulted and except for projects solely to pay subsidies for operating expenses, their views considered with respect to the corridor, location, and design of the project.

(m) Maximum amount of fares for elderly and handicapped persons utilizing project facilities and equipment receiving assistance

The Secretary shall not approve any project under this section unless the applicant agrees and gives satisfactory assurances, in such manner and form as may be required by the Secretary and in accordance with such terms and conditions as the Secretary may prescribe, that the rates charged elderly and handicapped persons during nonpeak hours for transportation utilizing or involving the facilities and equipment of the project financed with assistance under this section will not exceed one-half of the rates generally applicable to other persons at peak hours, whether the operation of such facilities and equipment is by the applicant or is by another entity under lease or otherwise.

(n) Applicability of other provisions

(1) The provisions of section 1609(c) of this title and section 1602(e)(4) of this title shall apply in carrying out mass transportation projects under this section.

(2) The provision of assistance under this section shall not be construed as bringing within the application of chapter 15 of title 5, any nonsupervisory employee of an urban mass transportation system (or of any other agency or entity performing related functions) to whom such chapter is otherwise inapplicable.

(Pub. L. 88-365, § 5, July 9, 1964, 78 Stat. 304; Pub. L. 90-34, June 28, 1967, 81 Stat. 81; Pub. L. 90-169, Dec. 1, 1967, 81 Stat. 526; Pub. L. 90-448, title VII, §§ 703, 704(b), Aug. 1, 1968, 82 Stat. 535; Pub. L. 91-152, title III, § 306(b), Dec. 24, 1969, 83 Stat. 392; Pub. L. 91-453, § 4, Oct. 15, 1970, 84 Stat. 966; Pub. L. 93-503, title I, § 103(a), Nov. 26, 1974, 88 Stat. 1567.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (i), is act July 14, 1955, ch. 360, as amended generally by Pub. L.

[1] So in original. Probably should be "section".

88-206, Dec. 17, 1963, 77 Stat. 392, as amended, which is classified generally to chapter 15B (§ 1857 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1857 of Title 42 and Tables volume.

The Federal Water Pollution Control Act, referred to in subsec. (i), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables volume.

The National Environmental Policy Act of 1969, referred to in subsec. (j)(5), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables volume.

The Civil Rights Act of 1964, referred to in subsec. (j)(5), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 2000a of Title 42 and Tables volume.

Title VIII of the Act of April 11, 1968 (Pub. L. 90-284), referred to in subsec. (j)(5), is classified generally to subchapter I (§ 3601 et seq.) of chapter 45 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Tables volume.

The Uniform Relocation Assistance and Land Acquisition Policies Act of 1970, referred to in subsec. (j)(5), probably means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which is act Jan. 2, 1971, Pub. L. 91-646, 84 Stat. 1894, as amended, and which is classified principally to chapter 61 (§ 4601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of Title 42 and Tables volume.

CODIFICATION

Subsection (g)(1) of this section, referred to in subsec. (b)(2), was, in the original, "section (g)" and has been editorially translated in order to conform to the probable intent of Congress.

AMENDMENTS

1974—Pub. L. 93-503 restructured provisions by replacing single unlettered paragraph with subsecs. (a) through (n), and, as so restructured, substituted provisions relating to grant program for urban mass transit for provisions relating to emergency Federal financial assistance program, terms and conditions of such program, and grants for net project costs.

1970—Pub. L. 91-453 substituted "July 1, 1972" for "July 1, 1971" and substituted provision that the remainder of the net project cost may be provided in whole or in part from other than public sources and that any public or private transit system funds so provided be solely from undistributed cash surpluses, replacement or depreciation funds or reserves available in cash, or new capital, for provision permitting not more than 50 per centum of the remainder of the net project cost to be provided from other than public sources, and requiring public or private transit system funds to be provided solely from undistributed cash surpluses, replacement or depreciation funds or reserves available in cash, or new capital, except that in the cases of demonstrated fiscal inability of an applicant actively engaged in preparing and effectuating a program for a unified or officially coordinated urban transportation system as part of the comprehensively planned development of the urban area, the remainder be provided from other than public sources.

1969—Pub. L. 91-152 substituted "July 1, 1971" for "July 1, 1970".

1968—Pub. L. 90-448 substituted "July 1, 1970" for "November 1, 1968", and inserted provisions permitting not more than 50 per centum of the remainder of the net project cost to be provided from other than public sources, and any public or private transit system funds to be provided solely from undistributed cash surpluses, replacement or depreciation funds or reserves available in cash, or new capital, except that in the cases of demonstrated fiscal inability of an applicant actively engaged in preparing and effectuating a program for a unified or officially coordinated urban transportation system as part of the comprehensively planned development of the urban area, the remainder may be provided from other than public sources.

1967—Pub. L. 90-169 substituted "November 1, 1968" for "November 1, 1967".

Pub. L. 90-34 substituted "November 1, 1967," for "July 1, 1967".

TRANSFER OF FUNCTIONS

Transfer to the Secretary of Transportation of functions of the Department of Housing and Urban Development and of the Secretary of Housing and Urban Development under this chapter, except the authority to make grants for or undertake projects or activities under sections 1605(a), 1607a, and 1607c of this title as primarily concern the relationship of urban transportation systems to the comprehensive planned development of urban areas or the role of transportation planning in overall urban planning and the functions under this section and sections 1602 and 1603 of this title required to enable the Secretary of Housing and Urban Development to advise and assist the Secretary of Transportation to make findings and determinations under this section and sections 1603(a) and 1602(c)(1) of this title and to establish jointly with the Secretary of Transportation the criteria referred to in the first sentence of section 1603(a) of this title, see Reorg. Plan No. 2 of 1968, eff. June 30, 1968, 33 F.R. 6965, 82 Stat. 1369, set out under section 1608 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1602, 1603, 1611, 1613 of this title.

§ 1604a. Investigation of safety hazards in urban mass transportation systems; submission of plan for correction of unsafe facilities, etc.

The Secretary of Transportation shall investigate unsafe conditions in any facility, equipment, or manner of operation financed under this Act which creates a serious hazard of death or injury for the purpose of determining its nature and extent and the means which might best be employed to eliminate or correct it. If the Secretary determines that such facility, equipment, or manner of operation is unsafe, he shall require the State or local public body or agency to submit to the Secretary a plan for correcting the unsafe facility, equipment, or manner of operation, and the Secretary may withhold further financial assistance to the applicant until such plan is approved or implemented.

(Pub. L. 93-503, title I, § 107, Nov. 26, 1974, 88 Stat. 1572.)

REFERENCES IN TEXT

This act, referred to in text, is Pub. L. 93-503, Nov. 26, 1974, 88 Stat. 1565, known as the "National Mass Transportation Assistance Act of 1974", which enacted sections 1601b, 1604a, and 1604b of this title, amended sections 1602, 1603, 1604, and 1611 of this title and section 3303 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under section 1605 of this title. For complete classification of this

Act to the Code, see Short Title of 1974 Amendment note set out under section 1601 of this title and Tables volume.

CODIFICATION

Section was not enacted as part of Pub. L. 88-365, July 9, 1964, 78 Stat. 302, known as the Urban Mass Transportation Act of 1964, which comprises this chapter.

§ 1604b. Fares for elderly and handicapped persons

Nothing contained in this title shall require the charging of fares to elderly and handicapped persons.

(Pub. L. 93-503, title I, § 108, Nov. 26, 1974, 88 Stat. 1572.)

REFERENCES IN TEXT

This title, referred to in text, is Pub. L. 93-503, title I, Nov. 26, 1974, 88 Stat. 1566, which enacted this section and section 1604a of this title, and amended sections 1602, 1603, 1604, and 1611 of this title and section 3303 of Title 42, The Public Health and Welfare. For complete classification of this Title to the Code, see Short Title of 1974 Amendment note set out under section 1601 of this title and Tables volume.

CODIFICATION

Section was not enacted as part of Pub. L. 88-365, July 9, 1964, 78 Stat. 302, known as the Urban Mass Transportation Act of 1964, which comprises this chapter.

§ 1605. Research, development, and demonstration projects

(a) Phases of urban mass transportation; acquisition of data

The Secretary is authorized to undertake research, development, and demonstration projects in all phases of urban mass transportation (including the development, testing, and demonstration of new facilities, equipment, techniques, and methods) which he determines will assist in the reduction of urban transportation needs, the improvement of mass transportation service, or the contribution of such service toward meeting total urban transportation needs at minimum cost. He may undertake such projects independently or by grant or contract (including working agreements with other Federal departments and agencies). In carrying out the provisions of this section, the Secretary is authorized to request and receive such information or data as he deems appropriate from public or private sources.

(b) Omitted

(c) Availability and limitation of funds

The Secretary may make available to finance projects under this section not to exceed $10,000,000 of the mass transportation grant authorization provided in section 1603(b) of this title, which limit shall be increased to $20,000,000 on July 1, 1965, and to $30,000,000 on July 1, 1966, to $40,000,000 on July 1, 1967, and to $56,000,000 on July 1, 1968. On or after July 1, 1969, the Secretary may make available to finance projects under this section such additional sums out of the grant authorization provided in section 1603(b) of this title as he deems appropriate.

(d) Authority of Secretary

Nothing contained in this section shall limit any authority of the Secretary under section 1701d-3 of title 12 or any other provision of law.

(Pub. L. 88-365, § 6, July 9, 1964, 78 Stat. 305; Pub. L. 89-117, title III, § 304(b), Aug. 10, 1965, 79 Stat. 475; Pub. L. 89-562, §§ 1(b), 3, Sept. 8, 1966, 80 Stat. 715, 717; Pub. L. 90-19, § 20(a), May 25, 1967, 81 Stat. 25; Pub. L. 90-448, title VII, § 701(b), Aug. 1, 1968, 82 Stat. 535; Pub. L. 91-453, § 13(b), Oct. 15, 1970, 84 Stat. 969.)

REFERENCES IN TEXT

Section 1701d-3 of title 12, referred to in subsec. (d), was repealed by Pub. L. 91-609, title V, § 503(3), Dec. 31, 1970, 84 Stat. 1785. See sections 1701z-1 to 1701z-4 of Title 12, Banks and Banking.

CODIFICATION

Subsec. (b) called for a study and for a program of research, development, and demonstration of new systems of urban transportation, with the report, findings, and recommendations resulting from such activities to be submitted not later than 18 months after Sept. 8, 1966, and has been omitted as executed.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-453 extended the authority of the Secretary to undertake projects by grant

1968—Subsec. (c). Pub. L. 90-448 substituted "$56,000,000" for "$50,000,000", and inserted provisions authorizing the Secretary, on or after July 1, 1969, to make available to finance projects under this section such additional sums out of the grant authorization as he deems appropriate.

1967—Pub. L. 90-19 substituted "Secretary" for "Administrator" wherever appearing in subsecs. (a), (c), and (d) of this section.

1966—Subsec. (b). Pub. L. 89-562, § 3, added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 89-562, §§ 1(b), 3, redesignated former subsec. (b) as (c) and, in subsec. (c) as so redesignated, added provisions for an increase to $40,000,000 on July 1, 1967, and to $50,000,000 on July 1, 1968, in the limit on the amount made available by the Administrator to finance projects. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 89-562, § 3, redesignated former subsec. (c) as (d).

1965—Subsec. (b). Pub. L. 89-117 deleted provisions which limited the unobligated balance of the amount available for mass transportation demonstration grants to the proviso in section 1453(b) of title 42 to financing projects under this section.

TRANSFER OF FUNCTIONS

Transfer to the Secretary of Transportation of functions of the Department of Housing and Urban Development and of the Secretary of Housing and Urban Development under this chapter, except the authority to make grants for or undertake projects or activities under subsec. (a) of this section and sections 1607a, and 1607c of this title as primarily concern the relationship of urban transportation systems to the comprehensive planned development of urban areas or the role of transportation planning in overall urban planning and the functions under sections 1602, 1603 and 1604 of this title required to enable the Secretary of Housing and Urban Development to advise and assist the Secretary of Transportation to make findings and determinations under sections 1602(c)(1), 1603(a), and 1604 of this title and to establish jointly with the Secretary of Transportation the criteria referred to in the first sentence of section 1603(a) of this title, see Reorg. Plan No. 2 of 1968, eff. June 30, 1968, 33 F.R. 6965, 82 Stat. 1369, set out under section 1608 of this title.

AUTOMATED GUIDEWAY TRANSIT SYSTEM AT DALLAS/FORT WORTH REGIONAL AIRPORT; DEMONSTRATION PROJECT IN URBAN MASS TRANSPORTATION FOR DESIGN, IMPROVEMENT, MODIFICATION, AND URBAN DEPLOYMENT OF SUCH TRANSIT SYSTEM; AUTHORIZATION OF APPROPRIATIONS

Pub. L. 94-280, title I, § 148, May 5, 1976, 90 Stat. 446, provided that: "The Secretary of Transportation, acting pursuant to his authority under section 6 of the Urban Mass Transportation Act of 1964 [this section], shall conduct a demonstration project in urban mass transportation for design, improvement, modification, and urban deployment of the Automated Guideway Transit system now in operation at the Dallas/Fort Worth Regional Airport. There is authorized to be appropriated to carry out this section $7,000,000 for the fiscal year ending September 30, 1977."

FARE-FREE MASS TRANSPORTATION DEMONSTRATION PROJECTS; LIMITATION ON FEDERAL GRANTS; SELECTION OF CITIES OR METROPOLITAN AREAS; PURPOSES OF STUDY; REPORTS TO CONGRESS; ADVISORY PARTICIPATION; APPROPRIATIONS

Pub. L. 93-503, title II, §§ 201 to 207, Nov. 26, 1974, 88 Stat. 1574, 1575, provided that:

"Sec. 201. The Secretary of Transportation (hereinafter referred to as the 'Secretary') shall enter into such contracts or other arrangements as may be necessary for research and the development, establishment, and operation of demonstration projects to determine the feasibility of fare-free urban mass transportation systems.

"Sec. 202. Federal grants or payments for the purpose of assisting such projects shall cover not to exceed 80 per centum of the cost of the project involved, including operating costs and the amortization of capital costs for any fiscal year for which such contract or other arrangement is in effect.

"Sec. 203. The Secretary shall select cities or metropolitan areas for such projects in accordance with the following:

"(1) to the extent practicable, such cities or metropolitan areas shall have a failing or nonexistent or marginally profitable transit system, a decaying central city, automobile-caused air pollution problems, and an immobile central city population;

"(2) several projects should be selected from cities or metropolitan areas of differing sizes and populations;

"(3) a high level of innovative service must be provided including the provision of crosstown and other transportation service to the extent necessary for central city residents and others to reach employment, shopping, and recreation; and

"(4) to the extent practicable, projects utilizing different modes of mass transportation shall be approved.

"Sec. 204. The Secretary shall study fare-free systems assisted pursuant to this title, and other financially assisted urban mass transportation systems providing reduced fares for the purpose of determining the following:

"(1) the effects of such systems on (i) vehicle traffic and attendant air pollution, congestion, and noise, (ii) the mobility of urban residents, and (iii) the economic viability of central city business;

"(2) the mode of mass transportation that can best meet the desired objectives;

"(3) the extent to which frivolous ridership increases as a result of reduced fare or fare-free systems;

"(4) the extent to which the need for urban highways might be reduced as a result of reduced fare or fare-free systems; and

"(5) the best means of financing reduced fare or fare-free transportation on a continuing basis.

"Sec. 205. The Secretary shall make annual reports to the Congress on the information gathered pursuant to section 204 of this title and shall make a final report of his findings, including any recommendations he might have to implement such findings, not later than June 30, 1975.

"Sec. 206. In carrying out the provisions of this title, the Secretary shall provide advisory participation by interested State and local government authorities, mass transportation systems management personnel, employee representatives, mass transportation riders, and any other persons that he may deem necessary or appropriate.

"Sec. 207. There are hereby authorized to be appropriated not to exceed $20,000,000 for each of the fiscal years ending on June 30, 1975, and June 30, 1976, respectively, to carry out the provisions of this title."

RAILROAD GRADE CROSSING ELIMINATION DEMONSTRATION PROJECT IN HAMMOND, INDIANA; AUTHORIZATION OF APPROPRIATIONS

Pub. L. 93-503, title III, §§ 301, 302, Nov. 26, 1974, 88 Stat. 1575, as amended by Pub. L. 94-280, title I, § 140(f), May 5, 1976, 90 Stat. 444, provided that:

"Sec. 301. The Secretary of Transportation shall enter into such arrangements as may be necessary to carry out a demonstration project in Hammond, Indiana, for the relocation of railroad lines for the purpose of eliminating highway railroad grade crossings. The Federal share payable on account of such project shall be that provided in section 120 of title 23, United States Code.

"Sec. 302. There are authorized to be appropriated to carry out this title not to exceed $14,000,000, except that not more than two-thirds of all funds expended under authority of this section in any fiscal year shall be appropriated out of the Highway Trust Fund."

SECRETARY'S AUTHORITY TO MAKE GRANTS FOR RESEARCH PROJECTS AND TECHNICAL STUDIES UNAFFECTED

Section 11 of Pub. L. 91-453 provided that: "Nothing in this Act [see Short Title of 1970 Amendment note under section 1601 of this title] shall affect the authority of the Secretary of Housing and Urban Development to make grants, under the authority of sections 6(a), 9, and 11 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1605(a), 1607a, and 1607c), and Reorganization Plan Numbered 2 of 1968 [set out in the Appendix to Title 5, Government Organization and Employees], for projects or activities primarily concerned with the relationship of urban transportation systems to the comprehensively planned development of urban areas, or the role of transportation planning in overall urban planning, out of funds appropriated to him for that purpose."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1612 of this title.

§ 1606. Relocation requirements and payments

(a) No financial assistance shall be extended to any project under section 1602 of this title unless the Secretary determines that an adequate relocation program is being carried on for families displaced by the project and that there are being or will be provided (in the same area or in other areas generally not less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the displaced families) an equal number of decent, safe, and sanitary dwellings available to those displaced families and reasonably accessible to their places of employment.

(b) Repealed. Pub. L. 91-646, title II, § 220(a)(4), Jan. 2, 1971, 84 Stat. 1903

(Pub. L. 88-365, § 7, July 9, 1964, 78 Stat. 305; Pub. L. 90-19, § 20(a), May 25, 1967, 81 Stat. 25;

Pub. L. 91-646, title II, § 220(a)(4), Jan. 2, 1971, 84 Stat. 1903.)

AMENDMENTS

1971—Subsec. (b). Pub. L. 91-646 repealed subsec. (b) which authorized grants for relocation payments, defined "relocation payments", limited amount of payment, and provided for issuance of rules and regulations. Subject matter is now covered by section 4601 et seq. of Title 42, The Public Health and Welfare.

1967—Pub. L. 90-19 substituted "Secretary" for "Administrator" wherever appearing in subsecs. (a) and (b) of this section.

EFFECTIVE DATE OF 1971 AMENDMENT

Repeal of subsec. (b) of this section by Pub. L. 91-646 not applicable to any State so long as sections 4630 and 4655 of Title 42, The Public Health and Welfare, are not applicable in such State; but such sections completely applicable to all States after July 1, 1972, but until such date applicable to a State to extent the State is able under its laws to comply with such sections, see section 221 of Pub. L. 91-646, set out as Effective Date note under section 4601 of Title 42, The Public Health and Welfare.

SAVINGS PROVISIONS

Any rights or liabilities existing under provisions repealed by section 220(a) of Pub. L. 91-646 as not affected by such repeal, see section 220(b) of Pub. L. 91-646, set out as Savings Provisions note under section 4621 of Title 42, The Public Health and Welfare.

TRANSFER OF FUNCTIONS

Transfer to the Secretary of Transportation of functions of the Department of Housing and Urban Development and of the Secretary of Housing and Urban Development under this chapter, except the authority to make grants for or undertake projects or activities under sections 1605(a), 1607a, and 1607c of this title as primarily concern the relationship of urban transportation systems to the comprehensive planned development of urban areas or the role of transportation planning in overall urban planning and the functions under sections 1602, 1603, and 1604 of this title required to enable the Secretary of Housing and Urban Development to advise and assist the Secretary of Transportation to make findings and determinations under sections 1602(c)(1), 1603(a), and 1604 of this title and to establish jointly with the Secretary of Transportation the criteria referred to in the first sentence of section 1603(a) of this title, see Reorg. Plan No. 2 of 1968, eff. June 30, 1968, 33 F.R. 6965, 82 Stat. 1369, set out under section 1608 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1602, 1603 of this title.

§ 1607. Omitted

CODIFICATION

Section, Pub. L. 88-365, § 8, July 9, 1964, 78 Stat. 306; Pub. L. 90-19, § 20(a), May 25, 1967, 81 Stat. 25, which called for consultation between the Secretary of Housing and Urban Development and the Secretary of Commerce on general urban transportation policies and programs and called for the exchange of information on proposed projects in urban areas, was omitted from the Code as superseded in view of section 6(a)(2)(A) of Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, set out as section 1655(a)(2)(A) of this title, which created the Department of Transportation and transferred to the Secretary of Transportation all functions, powers, and duties of the Secretary of Commerce under this chapter, and in view of Reorg. Plan No. 2 of 1968, eff. June 30, 1968, 33 F.R. 6965, 82 Stat. 1369, set out under section 1608 of this title, which transferred to the Secretary of Transportation all functions of the Secretary of Housing and Urban Development under this section, thereby combining in one official all consultive functions hereunder.

§ 1607a. Grants for technical studies

The Secretary is authorized to contract for and make grants to States and local public bodies and agencies thereof for the planning, engineering, designing, and evaluation of urban mass transportation projects, and for other technical studies, to be included, or proposed to be included, in a program (completed or under active preparation) for a unified or officially coordinated urban transportation system as a part of the comprehensively planned development of the urban area. Activities assisted under this section may include (1) studies relating to management, operations, capital requirements, and economic feasibility; (2) preparation of engineering and architectural surveys, plans, and specifications; (3) evaluation of previously funded projects; and (4) other similar or related activities preliminary and in preparation for the construction, acquisition, or improved operation of mass transportation systems, facilities, and equipment. A grant or contract under this section shall be made in accordance with criteria established by the Secretary.

(Pub. L. 88-365, § 9, as added Pub. L. 89-562, § 2(a)(2), Sept. 8, 1966, 80 Stat. 715, and amended Pub. L. 93-87, title III, § 301(d), Aug. 13, 1973, 87 Stat. 295.)

PRIOR PROVISIONS

A prior section 9 of Pub. L. 88-365 was renumbered section 12 by Pub. L. 89-562, § 2(a)(1), Sept. 8, 1966, 80 Stat. 715 and is classified to section 1608 of this title.

AMENDMENTS

1973—Pub. L. 93-87 substituted "to contract for and make grants" for "to make grants" and "designing, and evaluation" for "and designing" in the first sentence; provided assistance for cl. (3) activities relating to evaluation of previously funded projects; redesignated former cl. (3) as (4); inserted "or contract" following "A grant"; and deleted "and shall not exceed two-thirds of the cost of carrying out the activities for which the grant is made" following "Secretary" in the last sentence.

TRANSFER OF FUNCTIONS

Transfer to the Secretary of Transportation of functions of the Department of Housing and Urban Development and of the Secretary of Housing and Urban Development under this chapter, except the authority to make grants for or undertake projects or activities under this section and sections 1605(a) and 1607c of this title as primarily concern the relationship of urban transportation systems to the comprehensive planned development of urban areas or the role of transportation planning in overall urban planning and the functions under sections 1602, 1603 and 1604 of this title required to enable the Secretary of Housing and Urban Development to advise and assist the Secretary of Transportation to make findings and determinations under sections 1602(c)(1), 1603(a), and 1604 of this title and to establish jointly with the Secretary of Transportation the criteria referred to in the first sentence of section 1603(a) of this title, see Reorg. Plan No. 2 of 1968, eff. June 30, 1968, 33 F.R. 6965, 82 Stat. 1369, set out under section 1608 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1603 of this title.

§ 1607b. Grants for managerial training programs

(a) Fellowships; basis for selection; fellowship funds

The Secretary is authorized to make grants to States, local bodies, and agencies thereof to provide fellowships for training of personnel employed in managerial, technical, and professional positions in the urban mass transportation field. Fellowships shall be for not more than one year of advanced training in public or private nonprofit institutions of higher education offering programs of graduate study in business or public administration, or in other fields having application to the urban mass transportation industry. The State, local body, or agency receiving a grant under this section shall select persons for such fellowships on the basis of demonstrated ability and for the contribution which they can reasonably be expected to make to an efficient mass transportation operation. Not more than one hundred fellowships shall be awarded in any year. The grant assistance under this section toward each such fellowship shall not exceed $12,000, nor 75 per centum of the sum of (1) tuition and other charges to the fellowship recipient, (2) any additional costs incurred by the educational institution in connection with the fellowship and billed to the grant recipient, and (3) the regular salary of the fellowship recipient for the period of the fellowship (to the extent that salary is actually paid or reimbursed by the grant recipient).

(b) Limitation on fellowships awarded in any one state

Not more than 12½ per centum of the fellowships authorized pursuant to subsection (a) of this section shall be awarded for the training of employees of mass transportation companies in any one State.

(c) Limitation on funds available for fellowships

The Secretary may make available to finance grants under this section not to exceed $1,500,000 per annum of the grant funds appropriated pursuant to section 1603(b) of this title.

(Pub. L. 88-365, § 10, as added Pub. L. 89-562, § 2(a)(2), Sept. 8, 1966, 80 Stat. 716.)

PRIOR PROVISIONS

A prior section 10 of Pub. L. 88-365 was renumbered section 13 by Pub. L. 89-562, § 2(a)(1), Sept. 8, 1966, 80 Stat. 715 and is classified to section 1609 of this title.

TRANSFER OF FUNCTIONS

Transfer to the Secretary of Transportation of functions of the Department of Housing and Urban Development and of the Secretary of Housing and Urban Development under this chapter, except the authority to make grants for or undertake projects or activities under sections 1605(a), 1607a, and 1607c of this title as primarily concern the relationship of urban transportation systems to the comprehensive planned development of urban areas or the role of transportation planning in overall urban planning and the functions under sections 1602, 1603, and 1604 of this title required to enable the Secretary of Housing and Urban Development to advise and assist the Secretary of Transportation to make findings and determinations under sections 1602(c)(1), 1603(a), and 1604 of this title and to establish jointly with the Secretary of Transportation the criteria referred to in the first sentence of section 1603(a) of this title, see Reorg. Plan No. 2 of 1968, eff. June 30, 1968, 33 F.R. 6965, 82 Stat. 1369, set out under section 1608 of this title.

§ 1607c. Grants for research and training in urban transportation problems

(a) The Secretary is authorized to make grants to public and private nonprofit institutions of higher learning to assist in establishing or carrying on comprehensive research in the problems of transportation in urban areas. Such grants shall be used to conduct competent and qualified research and investigations into the theoretical or practical problems of urban transportation, or both, and to provide for the training of persons to carry on further research or to obtain employment in private or public organizations which plan, construct, operate, or manage urban transportation systems. Such research and investigations may include, without being limited to, the design and functioning of urban mass transit systems; the design and functioning of urban roads and highways; the interrelationship between various modes of urban and interurban transportation; the role of transportation planning in overall urban planning; public preferences in transportation; the economic allocation of transportation resources; and the legal, financial, engineering, and esthetic aspects of urban transportation. In making such grants the Secretary shall give preference to institutions of higher learning that undertake such research and training by bringing together knowledge and expertise in the various social science and technical disciplines that relate to urban transportation problems.

(b) The Secretary may make available to finance grants under this section not to exceed $3,000,000 per annum of the grant funds appropriated pursuant to section 1603(b) of this title.

(Pub. L. 88-365, § 11, as added Pub. L. 89-562, § 2(a)(2), Sept. 8, 1966, 80 Stat. 716.)

PRIOR PROVISIONS

A prior section 11 of Pub. L. 88-365 was renumbered section 14 by Pub. L. 89-562, § 2(a)(1), Sept. 8, 1966, 80 Stat. 715 and is classified to section 1610 of this title.

TRANSFER OF FUNCTIONS

Transfer to the Secretary of Transportation of functions of the Department of Housing and Urban Development and of the Secretary of Housing and Urban Development under this chapter, except the authority to make grants for or undertake projects or activities under this section and sections 1605(a) and 1607a of this title as primarily concern the relationship of urban transportation systems to the comprehensive planned development of urban areas or the role of transportation planning in overall urban planning and the functions under sections 1602, 1603, and 1604 of this title required to enable the Secretary of Housing and Urban Development to advise and assist the Secretary of Transportation to make findings and determinations under sections 1602(c)(1), 1603(a), and 1604 of this title and to establish jointly with the Secretary of Transportation the criteria referred to in the first sentence of section 1603(a) of this title, see Reorg. Plan No. 2 of 1968, eff. June 30, 1968, 33 F.R. 6965, 82 Stat. 1369, set out under section 1608 of this title.

§ 1608. General provisions

(a) Functions, powers, and duties of Secretary

In the performance of, and with respect to, the functions, powers, and duties vested in him by this chapter, the Secretary shall (in addition to any authority otherwise vested in him) have the functions, powers, and duties set forth in

section 1749a of title 12, except subsections (c)(2) and (f) of such section. Funds obtained or held by the Secretary in connection with the performance of his functions under this chapter shall be available for the administrative expenses of the Secretary in connection with the performance of such functions.

(b) Records; audit and examination

All contracts for construction, reconstruction, or improvement of facilities and equipment in furtherance of the purposes for which a loan or grant is made under this chapter, entered into by applicants under other than competitive bidding procedures as defined by the Secretary, shall provide that the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, for the purpose of audit and examination, have access to any books, documents, papers, and records of the contracting parties that are pertinent to the operations or activities under such contracts.

(c) Definitions

As used in this chapter—

(1) the term "States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States;

(2) the term "local public bodies" includes municipalities and other political subdivisions of States; public agencies and instrumentalities of one or more States, municipalities, and political subdivisions of States; and public corporations, boards, and commissions established under the laws of any State;

(3) the term "Secretary" means the Secretary of Transportation;

(4) the term "urban area" means any area that includes a municipality or other built-up place which is appropriate, in the judgment of the Secretary for a public transportation system to serve commuters or others in the locality taking into consideration the local patterns and trends of urban growth;

(5) the term "mass transportation" means transportation by bus, rail, or other conveyance, either publicly or privately owned, which provides to the public general or special service (but not including school buses or charter or sightseeing service) on a regular and continuing basis.

(d) Authorization of appropriations

There are hereby authorized to be appropriated, without fiscal year limitation out of any money in the Treasury not otherwise appropriated, the funds necessary to carry out the functions under this chapter.

(e) Regulation of operation of system, rates, rentals, or other charges; compliance with undertakings

None of the provisions of this chapter shall be construed to authorize the Secretary to regulate in any manner the mode of operation of any mass transportation system with respect to which a grant is made under section 1602 of this title or, after such grant is made, to regulate the rates, fares, tolls, rentals, or other charges fixed or prescribed for such system by any local public or private transit agency; but nothing in this subsection shall prevent the Secretary from taking such actions as may be necessary to require compliance by the agency or agencies involved with any undertakings furnished by such agency or agencies in connection with the application for the grant.

(f) Sex discrimination prohibition; enforcement; remedies

No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this chapter or carried on under this chapter. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.]. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee.

(Pub. L. 88-365, § 12, formerly § 9, July 9, 1964, 78 Stat. 306; Pub. L. 89-117, title XI, § 1109, Aug. 10, 1965, 79 Stat. 507; renumbered Pub. L. 89-562, § 2(a)(1), Sept. 8, 1966, 80 Stat. 715, and amended Pub. L. 90-19, § 20, May 25, 1967, 81 Stat. 25; 1968 Reorg. Plan No. 2, eff. June 30, 1968, 33 F.R. 6965, 82 Stat. 1369; Pub. L. 90-448, title VII, § 702, Aug. 1, 1968, 82 Stat. 535; Pub. L. 91-453, § 5, Oct. 15, 1970, 84 Stat. 966; Pub. L. 93-87, title III, § 301(f), Aug. 13, 1973, 87 Stat. 295.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (f), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables volume.

PRIOR PROVISIONS

A prior section 12 of Pub. L. 88-365 was renumbered section 15 by Pub. L. 89-562, § 2(a)(1), Sept. 8, 1966, 80 Stat. 715 and is classified to section 1611 of this title.

AMENDMENTS

1973—Subsec. (f). Pub. L. 93-87 added subsec. (f).

1970—Subsec. (d). Pub. L. 91-453 struck out reference to loans under section 1602 of this title and administrative expenses.

1968—Subsec. (c)(5). Pub. L. 90-448 included special service to the public, and substituted "on a regular and continuing basis" for "and moving over prescribed routes".

1967—Pub. L. 90-19, § 20(a), substituted "Secretary" for "Administrator" wherever appearing in subsecs. (a), (b), (c)(4), and (e) of this section.

Subsec. (c)(3). Pub. L. 90-19, § 20(b), substituted definition of "Secretary" meaning the Secretary of Housing and Urban Development for "Administrator" meaning the Housing and Home Finance Administrator.

1965—Subsec. (c). Pub. L. 89-117, § 1109, redesignated former subsec. (d) as subsec. (c) and repealed former subsec. (c) which required that all contracts for construction, reconstruction, or improvement in furtherance of this chapter include a provision that only articles manufactured in the United States be used by the contractor.

Subsec. (d). Pub. L. 89-117, § 1109, redesignated former subsec. (e) as subsec. (d). Former subsec. (d) redesignated as subsec. (c).

Subsec. (e). Pub. L. 89-117, § 1109, redesignated former subsec. (f) as subsec. (e). Former subsec. (e) redesignated as subsec. (d).

Subsec. (f). Pub. L. 89-117, § 1109, redesignated former subsec. (f) as subsec. (e). Former subsec. (e) redesignated as subsec. (d).

TRANSFER OF FUNCTIONS

"Secretary of Transportation" has been substituted for "Secretary of Housing and Urban Development" in subsec. (c)(3) pursuant to Reorg. Plan No. 2 of 1968, set out below, which transferred to the Secretary of Transportation the functions of the Department of Housing and Urban Development and of the Secretary of Housing and Urban Development under this chapter, except the authority to make grants for or undertake projects or activities udner sections 1605(a), 1607a, and 1607c of this title as primarily concern the relationship of urban transportation systems to the comprehensive planned development of urban areas or the role of transportation planning in overall urban planning and the functions under sections 1602, 1603, and 1604 of this title required to enable the Secretary of Housing and Urban Development to advise and assist the Secretary of Transportation to make findings and determinations under sections 1602(c)(1), 1603(a), and 1604 of this title and to establish jointly with the Secretary of Transportation the criteria referred to in the first sentence of section 1603(a) of this title.

PUBLIC MASS TRANSPORTATION STUDIES; EVALUATION OF 1972 NATIONAL TRANSPORTATION REPORT; REPORT TO CONGRESS OF EVALUATION; TAX REVENUES, STUDY; REPORT TO CONGRESS OF REVENUE STUDIES; APPROPRIATIONS AUTHORIZATION

Section 138 of Pub. L. 93-87 required the Secretary, in cooperation with the Governor of each State and appropriate local officials, to make an evaluation of that portion of the 1972 National Transportation Report, pertaining to public mass transportation; required such evaluation to include all urban areas, and to include but not be limited to the following: (1) Refining the public mass transportation needs contained in such report; (2) Developing a program to accomplish the needs of each urban area for public mass transportation; (3) Analyzing the existing funding capabilities of Federal, State, and local governments for meeting such needs; (4) Analyzing other funding capabilities of Federal, State, and local governments for meeting such needs; (5) Determining the operating and maintenance costs relating to the public mass transportation system; and (6) Determining and comparing fare structures of all public mass transportation systems; required the Secretary to, not later than July 1, 1974, report to Congress the results of this evaluation together with his recommendations for necessary legislation; required the Secretary to conduct a study of revenue mechanisms, including a tax on fuels used in the provision of urban mass transportation service, and an additional gasoline tax imposed in urban areas, which could be used now or in the future to finance transportation activities receiving financial assistance from the Highway Trust Fund; required such study to include an analysis of the magnitude of the various potential sources of user tax revenues, the rates at which such taxes could be levied (including possible differential rates), the mechanisms for collection of such taxes, the incidence of such taxes, and the potential impact on transit usage caused by such taxes; required the Secretary to report to the Congress the findings of his study by no later than the 180th day after Aug. 13, 1973; and appropriated not to exceed $10,000,000 to carry out this section.

REORGANIZATION PLAN NO. 2 OF 1968

Eff. June 30, 1968, 33 F.R. 6965, 82 Stat. 1369

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled February 26, 1968, pursuant to the provisions of chapter 9 of Title 5 of the United States Code.

URBAN MASS TRANSPORTATION

SECTION 1. TRANSFER OF FUNCTIONS

(a) There are hereby transferred to the Secretary of Transportation:

(1) The functions of the Secretary of Housing and Urban Development and the Department of Housing and Urban Development under the Urban Mass Transportation Act of 1964 (78 Stat. 302; 49 U.S.C. 1601-1611), except that there is reserved to the Secretary of Housing and Urban Development (i) the authority to make grants for or undertake such projects or activities udner sections 6(a), 9, and 11 of that Act (49 U.S.C. 1605(a); 1607a; 1607c) as primarily concern the relationship of urban transportation systems to the comprehensively planned development of urban areas, or the role of transportation planning in overall urban planning, and (ii) so much of the functions under sections 3, 4, and 5 of the Act (49 U.S.C. 1602-1604) as will enable the Secretary of Housing and Urban Development (A) to advise and assist the Secretary of Transportation in making findings and determinations under clause (1) of section 3(c), the first sentence of section 4(a), and clause (1) of section 5 of the Act, and (B) to establish jointly with the Secretary of Transportation the criteria referred to in the first sentence of section 4(a) of the Act.

(2) Other functions of the Secretary of Housing and Urban Development, and functions of the Department of Housing and Urban Development or of any agency or officer thereof, all to the extent that they are incidental to or necessary for the performance of the functions transferred by section 1(a)(1) of this reorganization plan, including, to such extent, the functions of the Secretary of Housing and Urban Development and the Department of Housing and Urban Development under (i) title II of the Housing Amendments of 1955 (69 Stat. 642; 42 U.S.C. 1491-1497), insofar as functions thereunder involve assistance specifically authorized for mass transportation facilities or equipment, and (ii) title IV of the Housing and Urban Development Act of 1965 (79 Stat. 485; 42 U.S.C. 3071-3074).

(3) The functions of the Department of Housing and Urban Development under section 3(b) of the Act of November 6, 1966 (P.L. 89-774; 80 Stat. 1352; 40 U.S.C. 672(b)).

(b) Any reference in this reorganization plan to any provision of law shall be deemed to include, as may be appropriate, reference there to as amended.

SEC. 2. DELEGATION

The Secretary of Transportation may delegate any of the functions transferred to him by this reorganization plan to such officers and employees of the Department of Transportation as he designates, and may authorize successive redelegations of such functions.

SEC. 3. URBAN MASS TRANSPORTATION ADMINISTRATION

(a) There is hereby established within the Department of Transportation an Urban Mass Transportation Administration.

(b) The Urban Mass Transportation Administration shall be headed by an Urban Mass Transportation Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall perform such duties as the Secretary of Transportation shall prescribe and shall report directly to the Secretary. [Amended. Pub. L. 90-623, § 7(d), Oct. 22, 1968, 82 Stat. 1316, rendered of no further effect the provision setting the compensation of the Urban Mass Transportation Administrator. That compensation is now fixed by section 5314(52) of Title 5, Government Organization and Employees.]

SEC. 4. INTERIM ADMINISTRATOR

The President may authorize any person who immediately prior to the effective date of this reorganization plan holds a position in the executive branch of the government to act as Urban Mass Transportation

Administrator until the office of Administrator is for the first time filled pursuant to the provisions of section 3(b) of this reorganization plan or by recess appointment, as the case may be. The person so designated shall be entitled to the compensation attached to the position he regularly holds.

SEC. 5. INCIDENTAL TRANSFERS

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Secretary of Transportation by this reorganization plan as the Director of the Bureau of the Budget shall determine shall be transferred from the Department of Housing and Urban Development to the Department of Transportation at such time or times as the Director shall direct.

(b) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers provided for in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

SEC. 6. EFFECTIVE DATE

The provisions of this reorganization plan shall take effect at the close of June 30, 1968, or at the time determined under the provisions of section 906(a) of title 5 of the United States Code, whichever is later.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

As long as he has lived in cities, man has struggled with the problem of urban transportation. But:

—Never before have these problems affected so many of our citizens.

—Never before has transportation been so important to the development of our urban centers.

—Never before have residents of urban areas faced a clearer choice concerning urban transportation—shall it dominate and restrict enjoyment of all the values of urban living, or shall it be shaped to bring convenience and efficiency to our citizens in urban areas.

How America and its cities solve the transportation problem depends largely on our two newest Federal Departments—the Department of Transportation and the Department of Housing and Urban Development:

—The Department of Housing and Urban Development is responsible for the character of all urban development.

—The Department of Transportation is concerned specifically with all the modes of transportation and their efficient interrelationship.

At present, responsibility for program assistance for urban highways and urban airports, and urban mass transportation is divided between the Department of Transportation and the Department of Housing and Urban Development. As a result:

—Federal coordination of transportation systems assistance is more difficult than it need be.

—Communities which have measured their own needs and developed comprehensive transportation proposals must deal with at least two federal agencies to carry out their programs.

To combine efficiently the facilities and services necessary for our urban centers and to improve transportation within our cities, State and local government agencies should be able to look to a single federal agency for program assistance and support. The large future cost of transportation facilities and services to the Federal Government, to State and local governments, and to the transportation industry makes side investments and efficient transportation systems essential.

An urban transportation system must:

—combine a basic system of efficient, responsive mass transit with all other forms and systems of urban, regional, and inter-city transportation;

—conform to and support balanced urban development.

In this, my second reorganization plan of 1968, I ask the Congress to transfer urban mass transportation programs to the Secretary of Transportation and to establish an Urban Mass Transportation Administration within the Department of Transportation to strengthen the organizational capacity of the Federal Government to achieve these objectives.

The plan transfers to and unifies in a new Urban Mass Transportation Administration in the Department of Transportation those functions which involve urban mass transportation project assistance and related research and development activities. Because urban research and planning and transportation research and planning are closely related, however, the plan provides that the Department of Housing and Urban Development perform an important role in connection with transportation research and planning insofar as they have significant impact on urban development.

We expect the Department of Transportation to provide leadership in transportation policy and assistance. The Department of Housing and Urban Development will provide leadership in comprehensive planning at the local level that includes transportation planning and relates it to broader urban development objectives.

The transfer of urban mass transportation programs will not diminish the overall responsibilities of the Department of Housing and Urban Development with respect to our cities. Rather, adequate authority is reserved to that Department to enable it to join with the Department of Transportation to assure that urban transportation develops as an integral component of the broader development of growing urban areas.

The new Urban Mass Transportation Administration in the Department of Transportation, working with other elements of the Department, will consolidate and focus our efforts to develop and employ the most modern transportation technology in the solution of the transportation problems of our cities.

The reorganization plan provides for an Administrator at the head of the Administration who would be appointed by the President, by and with the advice and consent of the Senate. The Administrator would report directly to the Secretary of Transportation and take his place in the Department with the heads of the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration and the Coast Guard.

I have found, after investigation, that each reorganization included in the reorganization plan transmitted herewith is necessary to accomplish one or more of the purposes set forth in sections 901(a) of title 5 of the United States Code.

I have also found that it is necessary to include in the accompanying plan, by reason of these reorganizations, provisions for the appointment and compensation of the new officer specified in section 3(b) of the plan. The rate of compensation fixed for this officer is comparable to those fixed for officers in the Executive Branch of the Government having similar responsibilities.

The reorganizations included in this plan will provide more effective management of transportation programs. It is not feasible to itemize the reduction in expenditures which the plan will achieve, but I have no doubt that this reorganization will preserve and strengthen overall comprehensive planning for developing urban areas while simultaneously insuring more efficient transportation systems for our cities than would otherwise have occurred.

I strongly urge that the Congress allow the reorganization plan to become effective.

LYNDON B. JOHNSON.

THE WHITE HOUSE, February 26, 1968.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1603 of this title.

§ 1609. Labor standards

(a) Action of Secretary

The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of loans or grants under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended [40 U.S.C. 276a et seq.]. The Secretary shall not approve any such loan or grant without first obtaining adequate assurance that required labor standards will be maintained upon the construction work.

(b) Authority of Secretary of Labor

The Secretary of Labor shall have, with respect to the labor standards specified in subsection (a) of this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), and section 276c of title 40.

(c) Interests of employees; protective arrangements; terms and conditions

It shall be a condition of any assistance under section 1602 of this title that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their positions with respect to their employment; (4) assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of this title. The contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangements.

(Pub. L. 88-365, § 13, formerly § 10, July 9, 1964, 78 Stat. 307, renumbered and amended Pub. L. 89-562, § 2(a)(1), (b)(2), Sept. 8, 1966, 80 Stat. 715, 716; Pub. L. 90-19, § 20(a), May 25, 1967, 81 Stat. 25.)

REFERENCES IN TEXT

The Davis-Bacon Act, as amended, referred to in subsec. (a), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables volume.

Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), referred to in subsec. (b), is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90-19 substituted "Secretary" for "Administrator" wherever appearing.

1966—Subsec. (c). Pub. L. 89-562, § 2(b)(2), substituted "under section 1602 of this title" for "under this chapter".

TRANSFER OF FUNCTIONS

Transfer to the Secretary of Transportation of functions of the Department of Housing and Urban Development and of the Secretary of Housing and Urban Development under this chapter, except the authority to make grants for or undertake projects or activities under sections 1605(a), 1607a, and 1607c of this title as primarily concern the relationship of urban transportation systems to the comprehensive planned development of urban areas or the role of transportation planning in overall urban planning and the functions under sections 1602, 1603, and 1604 of this title required to enable the Secretary of Housing and Urban Development to advise and assist the Secretary of Transportation to make findings and determinations under sections 1602(c)(1), and 1603(a), and 1604 of this title and to establish jointly with the Secretary of Transportation the criteria referred to in the first sentence of section 1603(a) of this title, see Reorg. Plan No. 2 of 1968, eff. June 30, 1968, 33 F.R. 6965, 82 Stat. 1369, set out under section 1608 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1602, 1604, 1613 of this title

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 1-1464 of the District of Columbia Code.

§ 1610. Environmental protection

(a) National policy; cooperation with other Federal departments and agencies

It is hereby declared to be the national policy that special effort shall be made to preserve the natural beauty of the countryside, public park and recreation lands, wildlife and waterfowl refuges, and important historical and cultural assets, in the planning, designing, and construction of urban mass transportation projects for which Federal assistance is provided pursuant to section 1602 of this title. In implementing this policy the Secretary shall cooperate and consult with the Secretaries of Agriculture, Health, Education, and Welfare, Housing and Urban Development, and Interior, and with the Council on Environmental Quality with regard to each project that may have a substantial impact on the environment.

(b) Review of hearing transcripts

The Secretary shall review each transcript of hearing submitted pursuant to section 1602(d) of this title to assure that an adequate opportunity was afforded for the presentation of views by all parties with a significant economic, social, or environmental interest, and that the project application includes a detailed statement on—

(1) the environmental impact of the proposed project,

(2) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(3) alternatives to the proposed project, and

(4) any irreversible and irretrievable impact on the environment which may be involved in the proposed project should it be implemented.

(c) Findings; inadequate record; notice and hearing

The Secretary shall not approve any application for assistance under section 1602 of this title unless he finds in writing, after a full and complete review of the application and of any hearings held before the State or local public agency pursuant to section 1602(d) of this title, that (1) adequate opportunity was afforded for the presentation of views by all parties with a significant economic, social, or environmental interest, and fair consideration has been given to the preservation and enhancement of the environment and to the interest of the community in which the project is located, and (2) either no adverse environmental effect is likely to result from such project, or there exists no feasible and prudent alternative to such effect and all reasonable steps have been taken to minimize such effect. In any case in which a hearing has not been held before the State or local agency pursuant to section 1602(d) of this title, or in which the Secretary determines that the record of hearings before the State or local public agency is inadequate to permit him to make the findings required under the preceding sentence, he shall conduct hearings, after giving adequate notice to interested persons, on any environmental issues raised by such application. Findings of the Secretary under this subsection shall be made a matter of public record.

(Pub. L. 88-365, § 14, formerly § 11, July 9, 1964, 78 Stat. 308, renumbered Pub. L. 89-562, § 2(a)(1), Sept. 8, 1966, 80 Stat. 715, and amended Pub. L. 90-19, § 20(a), May 25, 1967, 81 Stat. 25; Pub. L. 91-453, § 6, Oct. 15, 1970, 84 Stat. 966.)

AMENDMENTS

1970—Pub. L. 91-453 broadened the existing air pollution control requirement that in planning, designing, and constructing mass transportation projects financed under this chapter, special effort be made to preserve the natural beauty of the physical environment and important historical and cultural assets, and required the Secretary, in carrying out this policy, to cooperate and consult with the Secretaries of Agriculture, Health, Education, and Welfare, Housing and Urban Development, and Interior and with the Council on Environmental Quality, with regard to each project that may have a substantial impact on the environment, and to provide a fair opportunity for the presentation of views on the impact of the proposed project on the environment, and to make a finding that no adverse environmental effect is likely to result from the project, or that there is no feasible and prudent alternative to it.

1967—Pub. L. 90-19 substituted "Secretary" for "Administrator".

TRANSFER OF FUNCTIONS

Transfer to the Secretary of Transportation of functions of the Department of Housing and Urban Development and of the Secretary of Housing and Urban Development under this chapter, except the authority to make grants for or undertake projects or activities under sections 1605(a), 1607a, and 1607c of this title as primarily concern the relationship of urban transportation systems to the comprehensive planned development of urban areas or the role of transportation planning in overall urban planning and the functions under sections 1602, 1603, and 1604 of this title required to enable the Secretary of Housing and Urban Development to advise and assist the Secretary of Transportation to make findings and determinations under sections 1602(c)(1), 1603(a), and 1604 of this title and to establish jointly with the Secretary of Transportation the criteria referred to in the first sentence of section 1603(a) of this title, see Reorg. Plan No. 2 of 1968, eff. June 30, 1968, 33 F.R. 6965, 82 Stat. 1369, set out under section 1608 of this title.

§ 1611. Reporting system and uniform system of accounts; development, testing, etc.; purposes; implementation; coverage as precondition for future award of grants

(a) The Secretary shall by January 10, 1977, develop, test, and prescribe a reporting system to accumulate public mass transportation financial and operating information by uniform categories and a uniform system of accounts and records. Such systems shall be designed to assist in meeting the needs of individual public mass transportation systems, Federal, State, and local governments, and the public for information on which to base planning for public transportation services, and shall contain information appropriate to assist in the making of public sector investment decisions at all levels of government. The Secretary is authorized to develop and test these systems in consultation with interested persons and organizations. The Secretary is authorized to carry out this subsection independently, or by grant or contract (including working arrangements with other Federal, State, or local government agencies). The Secretary is authorized to request and receive such information or data as he deems appropriate from public or private sources.

(b) After July 1, 1978, the Secretary shall not make any grant under section 1604 of this title unless the applicant for such grant and any person or organization to receive benefits directly from that grant are each subject to both the reporting system and the uniform system of accounts and records prescribed under subsection (a) of this section.

(Pub. L. 88-365, § 15, formerly § 12, July 9, 1964, 78 Stat. 308, renumbered and amended Pub. L. 89-562, §§ 2(a)(1), 4, Sept. 8, 1966, 80 Stat. 715, 717; Pub. L. 91-453, § 7, Oct. 15, 1970, 84 Stat. 967; Pub. L. 93-503, title I, § 111, Nov. 26, 1974, 88 Stat. 1573.)

AMENDMENTS

1974—Pub. L. 93-503 designated existing provisions as subsec. (a), and, as so designated, substituted provisions requiring the Secretary to develop, test, and prescribe a reporting system and uniform system of accounts for public mass transportation systems for provisions setting forth limitations for grants within one State, and added subsec. (b).

1970—Pub. L. 91-453 added provision that capital grants made on or after July 1, 1970, under section 1602 of this title, for projects in any one State, may not exceed in the aggregate 12½ percent of the aggregate amount of funds authorized to be obligated under section 1603(c) of this title, except that 15 percent of the aggregate amount of the funds authorized to be obligated under section 1603(c) of this title may be used by the Secretary, without regard to the 12½ percent limitation, for grants in States where more than two-thirds of the funds available under the 12½ percent limitation had been obligated and that in the computation of State limitations, grants for relocation

payments were to be excluded, and further provided for an equitable distribution of grants made under section 1602 of this title when the project is in pursuance of a specified interstate compact.

1966—Pub. L. 89-562, § 4, added a proviso authorizing the Secretary, without regard to the 12½ per centum limitation, to enter into contracts for grants udner section 1602 of this title aggregating not to exceed $12,500,000 with local public bodies and agencies in states where more than two-thirds of the maximum grants permitted in the respective states had been obligated.

TRANSFER OF FUNCTIONS

Transfer to the Secretary of Transportation of functions of the Department of Housing and Urban Development and of the Secretary of Housing and Urban Development under this chapter, except the authority to make grants for or undertake projects or activities under sections 1605(a), 1607a, and 1607c of this title as primarily concern the relationship of urban transportation systems to the comprehensive planned development of urban areas or the role of transportation planning in overall urban planning and the functions under sections 1602, 1603, and 1604 of this title required to enable the Secretary of Housing and Urban Development to advise and assist the Secretary of Transportation to make findings and determinations under sections 1602(c)(1), 1603(a), and 1604 of this title and to establish jointly with the Secretary of Transportation the criteria referred to in the first sentence of section 1603(a) of this title, see Reorg. Plan No. 2 of 1968, eff. June 30, 1968, 33 F.R. 6965, 82 Stat. 1369, set out under section 1608 of this title.

§ 1612. Planning and design of mass transportation facilities to meet special needs of the elderly and the handicapped

(a) Congressional declaration of policy

It is hereby declared to be the national policy that elderly and handicapped persons have the same right as other persons to utilize mass transportation facilities and services; that special efforts shall be made in the planning and design of mass transportation facilities and services so that the availability to elderly and handicapped persons of mass transportation which they can effectively utilize will be assured; and that all Federal programs offering assistance in the field of mass transportation (including the programs under this chapter) should contain provisions implementing this policy.

(b) Grants and loans for special projects to meet the needs of elderly and handicapped persons

In addition to the grants and loans otherwise provided for under this chapter, the Secretary is authorized to make grants and loans—

(1) to States and local public bodies and agencies thereof for the specific purpose of assisting them in providing mass transportation services which are planned, designed, and carried out so as to meet the special needs of elderly and handicapped persons, with such grants and loans being subject to all of the terms, conditions, requirements, and provisions applicable to grants and loans made under section 1602(a) of this title and being considered for the purposes of all other laws to have been made under such section; and

(2) to private nonprofit corporations and associations for the specific purpose of assisting them in providing transportation services meeting the special needs of elderly and handicapped persons for whom mass transportation services planned, designed, and carried out under paragraph (1) are unavailable, insufficient, or inappropriate, with such grants and loans being subject to such terms, conditions, requirements, and provisions (similar insofar as may be appropriate to those applicable to grants and loans under paragraph (1)) as the Secretary may determine to be necessary or appropriate for purposes of this paragraph.

Of the total amount of the obligations which the Secretary is authorized to incur on behalf of the United States under the first sentence of section 1603(c) of this title, 2 per centum may be set aside and used exclusively to finance the programs and activities authorized by this subsection (including administrative costs).

(c) Financing of research, development and demonstration projects

Of any amounts made available to finance research, development, and demonstration projects under section 1605 of this title after October 15, 1970, 1½ per centum may be set aside and used exclusively to increase the information and technology which is available to provide improved transportation facilities and services planned and designed to meet the special needs of elderly and handicapped persons.

(d) Definition

For purposes of this chapter, the term "handicapped person" means any individual who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, is unable without special facilities or special planning or design to utilize mass transportation facilities and services as effectively as persons who are not so affected.

(Pub. L. 88-365, § 16, as added Pub. L. 91-453, § 8, Oct. 15, 1970, 84 Stat. 967, and amended Pub. L. 93-87, title III, § 301(g), Aug. 13, 1973, 87 Stat. 295.)

AMENDMENTS

1973—Subsec. (b). Pub. L. 93-87 incorporated existing provisions in the text designated as cl. (1), added cl. (2), and substituted a rate of "2" for "1½" per centum.

CROSS REFERENCES

Washington Metropolitan Area Transit Authority, payments to; Metro accessibility to the handicapped, see section 1-1442a of District of Columbia Code.

§ 1613. Emergency financial assistance

(a) Purposes of reimbursement

The Secretary shall provide financial assistance for the purpose of reimbursing—

(1) the Consolidated Rail Corporation, the National Railroad Passenger Corporation, other railroads, and, if applicable, the trustee or trustees of a railroad in reorganization in the region (as defined in section 702 of title 45) for the costs of rail passenger service operations conducted at a loss during the 180-day mandatory operation period, as required under section 744(e) of title 45. Such reimbursement shall cover all costs not otherwise paid by a State or a local or regional transportation authority which would have been payable by such State or authority, pursuant

to regulations issued by the Office under section 715(d)(5) of title 45 if such regulations had been in effect on the date of conveyance of rail properties under section 743(b)(1) of title 45; and

(2) States, local public bodies, and agencies thereof for additional costs incurred by such States, bodies, and agencies with respect to rail passenger service required by section 744(e)(4) of title 45.

(b) Nonapplicability

Financial assistance under subsection (a) of this section shall not apply to intercity rail passenger service provided pursuant to an agreement with the National Railroad Passenger Corporation which was in effect immediately prior to such date of conveyance.

(c) Terms and conditions; exceptions; waivers

Financial assistance provided pursuant to subsection (a) of this section shall be subject to such terms, conditions, requirements, and provisions as the Secretary may deem necessary and appropriate with such reasonable exceptions to requirements and provisions otherwise applicable under this chapter as the Secretary may deem required by the emergency nature of the assistance authorized by this section. Nothing in this section shall authorize the Secretary to waive the provisions of section 1609(c) of this title.

(d) Federal share of costs of rail passenger service; duration

The Federal share of the costs of any rail passenger service required by subsections (c) and (e) of section 744 of title 45 shall be as follows:

(1) 100 percent of the costs eligible under subsections (a)(1) or (a)(2) of this section for the 180-day mandatory operation period required by section 744(e) of title 45;

(2) 100 percent for the 180-day period following the 180-day mandatory operation period;

(3) 90 percent for the 12-month period succeeding the period specified in subparagraph (2) of this subsection; and

(4) 50 percent for the 180-day period succeeding the period specified in subparagraph (3) of this subsection.

No assistance may be provided beyond the time specified in subsection (d)(3) of this section, unless the applicant for such assistance provides satisfactory assurances to the Secretary that the service for which such assistance is sought will be continued after the termination of the assistance authorized by this section.

(e) Applicability of other statutory provisions

The terms and provisions which are applicable to assistance provided pursuant to this section shall be consistent, insofar as is practicable, with the terms and provisions which are applicable to operating assistance under section 1604 of this title.

(f) Funding authority; authorization of appropriations for liquidation of obligations funding assistance programs

To finance assistance under this section, the Secretary may incur obligations on behalf of the United States in the form of grants, contract agreements, or otherwise, in such amounts as are provided in appropriations Acts, in an aggregate amount not to exceed $125,000,000. There are authorized to be appropriated for liquidation of the obligations incurred under this section not to exceed $40,000,000 by September 30, 1976, $95,000,000 by September 30, 1977, and $125,000,000 by September 30, 1978, such sums to remain available until expended.

(Pub. L. 88-365, § 17, as added Pub. L. 94-210, title VIII, § 808, Feb. 5, 1976, 90 Stat. 143.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 45 sections 715, 744.

CHAPTER 22—HIGH-SPEED GROUND TRANSPORTATION

Sec.
1631. Research and development.
1632. Demonstrations.
1633. Limitation of research and development or demonstrations to particular mode of transportation.
1634. Collection and collation of transportation data.
1635. Advisory committee; establishment; composition; appointment; duties.
1636. Protective arrangements for common carrier employees; labor standards.
1637. Authority of Secretary.
1638. Contracts with public or private agencies; appointment of personnel; procurement of services.
1639. Consultation and cooperation with other departments and agencies, institutions and private industry.
1640. Reports and information.
(a) Annual report to President and Congress.
(b) Evaluation report to President and Congress; recommendations.
(c) Information furnished to Congressional committees.
1641. Authorization of appropriations.
1642. Repealed.
1643. Omitted.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1655 of this title; title 23 section 322.

§ 1631. Research and development

Consistent with the objective of promoting a safe, adequate, economical, and efficient national transportation system, the Secretary of Transportation (hereafter in this chapter referred to as the "Secretary") is authorized to undertake research and development in high-speed ground transportation and door-to-door ground transportation, including, but not limited to, components, such as materials, aerodynamics, vehicle propulsion, vehicle control, communications, and guideways.

(Pub. L. 89-220, § 1, Sept. 30, 1965, 79 Stat. 893; Pub. L. 90-423, § 1(a), July 24, 1968, 82 Stat. 424; Pub. L. 92-348, § 1(a), July 13, 1972, 86 Stat. 462.)

AMENDMENTS

1972—Pub. L. 92-348 added "and door-to-door ground transportation" following "high-speed ground transportation".

1968—Pub. L. 90-423 substituted "Secretary of Transportation" for "Secretary of Commerce".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1633, 1635, 1637 of this title.

§ 1632. Demonstrations

The Secretary is authorized to contract for demonstrations to determine the contributions that high-speed ground transportation and door-to-door ground transportation could make to more efficient, safe, and economical intercity transportation systems. Such demonstrations shall be designed to measure and evaluate such factors as the public response to new equipment, higher speeds, variations in fares, improved comfort and convenience, and more frequent service. In connection with contracts for demonstrations under this section, the Secretary shall provide for financial participation by private industry to the maximum extent practicable.

(Pub. L. 89-220, § 2, Sept. 30, 1965, 79 Stat. 893; Pub. L. 92-348, § 1(b), July 13, 1972, 86 Stat. 462.)

AMENDMENTS

1972—Pub. L. 92-348 added "and door-to-door ground transportation" following "high-speed ground transportation" and ", safe," following "efficient".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1633, 1635, 1636, 1637 of this title.

§ 1633. Limitation of research and development or demonstrations to particular mode of transportation

Nothing in this chapter shall be deemed to limit research and development carried out under section 1631 of this title or demonstrations contracted for under section 1632 of this title to any particular mode of high-speed ground transportation.

(Pub. L. 89-220, § 3, Sept. 30, 1965, 79 Stat. 893.)

§ 1634. Collection and collation of transportation data

The Secretary is authorized to collect and collate transportation data, statistics, and other information which he determines will contribute to the improvement of the national transportation system. In carrying out this activity, the Secretary shall utilize the data, statistics, and other information available from Federal agencies and other sources of the greatest practicable extent. The data, statistics, and other information collected under this section shall be made available to other Federal agencies and to the public insofar as practicable.

(Pub. L. 89-220, § 4, Sept. 30, 1965, 79 Stat. 893.)

§ 1635. Advisory committee; establishment; composition; appointment; duties

(a) There is hereby established in the Department of Transportation an advisory committee consisting of seven members who shall be appointed by the Secretary without regard to the civil service laws. The Secretary shall designate one of the members of the Advisory Committee as its Chairman. Members of the Advisory Committee shall be selected from among leading authorities in the field of transportation.

(b) The Advisory Committee shall advise the Secretary with respect to policy matters arising in the administration of this chapter, particularly with respect to research and development carried out under the section 1631 of this title and contracts for demonstrations entered into under section 1632 of this title.

(Pub. L. 89-220, § 5, Sept. 30, 1965, 79 Stat. 893; Pub. L. 90-423, § 1(b), July 24, 1968, 82 Stat. 424.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (a), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90-423 substituted "Department of Transportation" for "Department of Commerce".

TERMINATION OF ADVISORY COMMITTEES

Advisory Committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law, see section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1636. Protective arrangements for common carrier employees; labor standards

(a) In carrying out the provisions of section 1632 of this title, the Secretary shall provide fair and equitable arrangements, as determined by the Secretary of Labor, to protect the interests of the employees of any common carrier who are affected by any demonstration carried out under a contract between the Secretary and such carrier under such section. Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) to such employees under existing collective-bargaining agreements, or otherwise; (2) the continuation of collective-bargaining rights; (3) the protection of such individual employees against a worsening of their positions with respect to their employment as a result of such demonstration; (4) assurances of priority of reemployment of employees terminated or laid off as a result of such demonstration; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment as the result of such demonstrations which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of this title. Any contract entered into pursuant to the provisions of section 1632 of this title shall specify the terms and conditions of such protective arrangements.

(b) The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of funds re-

ceived under any contract or agreement entered into under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended [40 U.S.C. 276a et seq.]. The Secretary shall not enter into any such contract or agreement without first obtaining adequate assurance that required labor standards will be maintained upon the construction work. The Secretary of Labor shall have with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 276c of title 40.

(Pub. L. 89-220, § 6, Sept. 30, 1965, 79 Stat. 893.)

REFERENCES IN TEXT

The Davis-Bacon Act, as amended, referred to in subsec. (b), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables volume.

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (b), is set out in the Appendix to Title 5, Government Organization and Employees.

§ 1637. Authority of Secretary

In exercising the authority granted in sections 1631 and 1632 of this title, the Secretary may lease, purchase, develop, test, and evaluate new facilities, equipment, techniques, and methods and conduct such other activities as may be necessary, but nothing in this chapter shall be deemed to authorize the Secretary to acquire any interest in any line of railroad. In furtherance of these activities, the Secretary may acquire necessary sites by purchase, lease, or grant and may acquire, construct, repair, or furnish necessary support facilities. In furtherance of a demonstration program, the Secretary may contract for the construction of two suburban rail stations, one at Lanham, Maryland, and one at Woodbridge, New Jersey, without acquiring any property interest therein.

(Pub. L. 89-220, § 7, Sept. 30, 1965, 79 Stat. 894; Pub. L. 90-423, § 1(c), July 24, 1968, 72 Stat. 424.)

AMENDMENTS

1968—Pub. L. 90-423 added provisions authorizing the Secretary to acquire the necessary sites by purchase, lease, or grant and to acquire, construct, repair, or furnish the necessary support facilities, and provisions authorizing the construction of two suburban rail stations, without acquiring any property interest therein, in furtherance of a demonstration program.

HIGH-SPEED TRANSPORTATION DEMONSTRATION; BUS SERVICE ORIGINATING FROM COLLECTION POINTS, WASHINGTON, D.C. AND TERMINATING DULLES INTERNATIONAL AIRPORT, VIRGINIA

Pub. L. 93-87, title I, § 146, Aug. 13, 1973, 87 Stat. 273, provided that: "The Secretary is authorized to undertake a study and demonstration program for high-speed bus service from collection points in the Washington, District of Columbia area to Dulles International Airport, Virginia. Such study and demonstration shall utilize exclusive bus transportation lanes between points of origin and termination of such service, and include, where necessary, the construction of such exclusive bus transportation lanes as well as terminal and parking facilities. Such study and demonstration shall also include the purchase of high-speed buses. As necessary to implement this section, the Secretary shall undertake research into the development of buses designed to maintain high-speed, safe transportation. Not to exceed $10,000,000 of the amount authorized to be apportioned under section 104(b)(6) of title 23, United States Code, for the fiscal year ending June 30, 1975, shall be available to the Secretary to carry out this section and such sum shall be set aside for such purpose prior to the apportionment of such amount for such fiscal year."

§ 1638. Contracts with public or private agencies; appointment of personnel; procurement of services

(a)(1) In exercising the authority granted under this chapter, the Secretary is authorized to enter into agreements and to contract with public or private agencies, institutions, organizations, corporations, and individuals, without regard to section 529 of title 31 and section 5 of title 41.

(2) In awarding contracts in connection with research and development and demonstration projects under this chapter, the Secretary shall give priority to proposals which will increase employment in labor areas (as those areas are described by the Secretary of Labor in title 41 of the Code of Federal Regulations)—

(A) which are experiencing a rate of unemployment of 9 per centum or more of the area's work force, or a rate of unemployment of 150 per centum or more of the federally determined unemployment rate for the entire United States; or

(B) which have experienced a 1 per centum increase in unemployment, as determined by the Secretary of Labor, of the available work force as a result of the termination or reduction of a federally financed or supported program and such increase in unemployment continues to exist.

Nothing in this paragraph shall be construed to require that any contract awarded under this chapter must be wholly performed in any one labor area.

(3) Except as provided in paragraph (2) of this subsection, the private agencies, institutions, organizations, corporations, and individuals with which the Secretary enters into agreements or contracts to carry out research and development under this chapter shall, to the maximum extent practicable, be geographically distributed throughout the United States.

(4) Each agreement or contract entered into under this chapter under other than competitive bidding procedures, as determined by the Secretary, shall provide that the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, may, for the purpose of audit and examination, have access to any books, documents, papers, and records of the parties to such agreement or contract which are pertinent to the operations or activities under such agreement or contract.

(b) The Secretary is authorized to appoint, subject to the civil service laws and regulations, such personnel as may be necessary to enable him to carry out efficiently his functions and responsibilities under this chapter. The Secretary is further authorized to procure services as authorized by section 3109 of title 5, but at

rates for individuals not to exceed $100 per diem, unless otherwise specified in an appropriation Act.

(Pub. L. 89-220, § 8, Sept. 30, 1965, 79 Stat. 894; Pub. L. 92-348, § 2, July 13, 1972, 86 Stat. 462.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (b), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

CODIFICATION

In subsec. (b), "section 3109 of title 5" was substituted for "section 15 of the Act of August 3, 1946 (5 U.S.C. 55a)" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1972—Subsec. (a). Pub. L. 92-348 added par. (2), redesignated former pars. (2) and (3) as (3) and (4), respectively, and in par. (3), as so redesignated, substituted "Except as provided in paragraph (2) of this subsection" for "To the maximum extent practicable" and added "to the maximum extent practicable" following "this chapter shall,".

§ 1639. Consultation and cooperation with other departments and agencies, institutions and private industry

In exercising the authority granted under this chapter, the Secretary shall consult and cooperate, as he deems appropriate, with the Secretary of Housing and Urban Development and other departments and agencies, Federal, State, and local. The Secretary shall further consult and cooperate, as he deems appropriate, with institutions and private industry.

(Pub. L. 89-220, § 9, Sept. 30, 1965, 79 Stat. 895; Pub. L. 90-423, § 1(d), July 24, 1968, 82 Stat. 424.)

AMENDMENTS

1968—Pub. L. 90-423 substituted "Secretary of Housing and Urban Development" for "Administrator of the Housing and Home Finance Agency".

§ 1640. Reports and information

(a) Annual report to President and Congress

The Secretary shall report to the President and the Congress not less often than annually with respect to activities carried out under this chapter.

(b) Evaluation report to President and Congress; recommendations

The Secretary shall report to the President and the Congress the results of his evaluation of the research and development program and the demonstration program authorized by this chapter, and shall make recommendations to the President and the Congress with respect to such future action as may be appropriate in the light of these results and their relationship to other modes of transportation in attaining the objective of promoting a safe, adequate, economical, and efficient national transportation system.

(c) Information furnished to Congressional committees

The Secretary shall, if requested by any appropriate committee of the Senate or House of Representatives, furnish such committee with information concerning activities carried out under this chapter and information obtained from research and development carried out with funds appropriated pursuant to this chapter.

(Pub. L. 89-220, § 10, Sept. 30, 1965, 79 Stat. 895.)

§ 1641. Authorization of appropriations

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter, but not to exceed $20,000,000 for the fiscal year ending June 30, 1966; $35,000,000 for the fiscal year ending June 30, 1967; $35,000,000 for the fiscal year ending June 30, 1968; $16,200,000 for the fiscal year ending June 30, 1969; $21,200,000 for the fiscal year ending June 30, 1970; $21,700,000 for the fiscal year ending June 30, 1971; $97,000,000 for the fiscal year ending June 30, 1973; $126,000,000 for the fiscal year ending June 30, 1974; and $92,900,000 for the fiscal year ending June 30, 1975. Such sums shall remain available until expended.

(Pub. L. 89-220, § 11, Sept. 30, 1965, 79 Stat. 895; Pub. L. 90-423, § 1(e), July 24, 1968, 82 Stat. 424; Pub. L. 91-444, § 1(a), Oct. 13, 1970, 84 Stat. 915; Pub. L. 92-348, § 3, July 13, 1972, 86 Stat. 463.)

AMENDMENTS

1972—Pub. L. 92-348 authorized appropriations of $97,000,000 for the fiscal year ending June 30, 1973, $126,000,000 for the fiscal year ending June 30, 1974, and $92,900,000 for the fiscal year ending June 30, 1975.

1970—Pub. L. 91-444 authorized appropriation of $21,700,000 for the fiscal year ending June 30, 1971.

1968—Pub. L. 90-423 authorized appropriations of $16,200,000 and $21,200,000 for the fiscal years ending June 30, 1969, and June 30, 1970, respectively.

§ 1642. Repealed. Pub. L. 92-348, § 4, July 13, 1972, 86 Stat. 463

Section, Pub. L. 89-220, § 12, Sept. 30, 1965, 79 Stat. 895; Pub. L. 90-423, § 1(f), July 24, 1968, 82 Stat. 424; Pub. L. 91-444, § 1(b), Oct. 13, 1970, 84 Stat. 915, provided for the termination of this chapter on June 30, 1972 and the affect of such termination on the disbursement of funds, contract commitments, or other obligations entered into pursuant to this chapter.

§ 1643. Omitted

CODIFICATION

Section, Pub. L. 89-220, § 13, as added Pub. L. 93-496, § 13, Oct. 28, 1974, 88 Stat. 1531, related to the study by the Secretary of Transportation of the feasibility of constructing a high speed ground transportation system between Tijuana, Mexico, and Vancouver, Canada and required submission of a report by the Secretary no later than Jan. 30, 1977, containing the conclusions drawn from his study.

CHAPTER 23—DEPARTMENT OF TRANSPORTATION

Sec.
1651. Congressional declaration of purpose.
1652. Establishment of Department.
(a) Designation and appointment of Secretary of Transportation.

Sec.
(b) Deputy Secretary; appointment; functions, powers, and duties.
(c) Assistant Secretaries; General Counsel; appointment; functions, powers, and duties.
(d) Assistant Secretary for Administration; appointment; functions, powers, and duties.
(e) Federal Highway Administration; Federal Railroad Administration; Federal Aviation Administration; establishment; Administrators and Deputy Federal Aviation Administrator; appointment, functions, powers and duties; transfer of functions.
(f) National Traffic Safety Bureau; National Highway Safety Bureau; establishment; appointment of Directors; transfer and continuation of office of Federal Highway Administrator under title of Director of Public Roads.
1652a. Regional Organization of Federal Railroad Administration; administration and enforcement of railroad safety laws.
1653. General provisions.
(a) Responsibilities of Secretary of Transportation; leadership, consultation, and coordination.
(b) Congressional policy standards for transportation; prohibition against adoption of standards or policy without appropriate Congressional action.
(c) Judicial review of orders of Secretary and Administrators; applicability.
(d) Carryover of authority to Secretary and Administrators from departments and agencies formerly exercising functions and duties.
(e) Safety record of applicants seeking operating authority from Interstate Commerce Commission.
(f) Maintenance and enhancement of natural beauty of land traversed by transportation lines.
(g) Consultation with Secretary of Housing and Urban Development; annual report to the President for submission to Congress.
(h) Model intermodal transportation terminal at Union Station; authorization for design, plan, and coordination of construction; lease or transfer of space; time for completion of design, plans and construction; authorization of appropriations; application of other laws.
(i) Conversion of railroad terminals into intermodal transportation terminals; assistance by Secretary; criteria for financial assistance; consultations; applications; preference; recordkeeping requirements; audit and examination of books, etc.; authorization of appropriations; definitions; eligibility under other Federal programs or plans.
1653a. Rail bank.
(a) Establishment by Secretary; scope.
(b) Acquisition, holding and disposition of rail properties by Secretary.
(c) Authorization of appropriations.
1654. Rail service responsibilities of Secretary.
(a) Development and availability of plans, proposals, and recommendations for unification or coordination projects.
Sec.
(b) Assistance in planning, negotiating, and effecting unification or coordination of operations and facilities.
(c) Conduct of studies to determine potential cost savings and improvements resulting from unification or coordination; access to information; subpoenas.
(d) Conferences and mediation of disputes relating to any proposed unification or coordination project; antitrust exemption for person attending or represented at conferences.
(e) Study of proposed merger, etc. subject to jurisdiction of Interstate Commerce Commission; applicable statutory provision for consideration of proposal; appearance before Commission.
(f) Financial assistance to States for rail freight assistance programs; purposes of programs.
(g) Federal share of costs of rail service assistance programs; adjustments; standards and procedures for adjustment of State share of costs.
(h) State rail service assistance entitlement; computation of amount; reallocation.
(i) Allocation by State of rail service assistance; grants to States.
(j) Preconditions for eligibility of States for fail service assistance.
(k) Preconditions for eligibility of project for financial assistance from applicable rail service assistance program.
(l) Additional payments to State for project eligible for financial assistance from applicable rail service assistance program.
(m) Recordkeeping, auditing, etc., requirements of recipients of financial assistance.
(n) Definition.
(o) Authorization of appropriations; availability of unexpended appropriations.
1655. Transfer of functions.
(a) Powers and duties of the Secretary of Commerce and other offices and officers of the Department of Commerce relating to highways, ground transportation generally, aircraft, pilotage, and traffic and highway safety generally.
(b) Coast Guard; functions of the Secretary of the Treasury and other offices and officers of the Department of the Treasury relating to the Coast Guard.
(c) Federal Aviation Agency; functions, powers, and duties of Administrator and other offices and officers.
(d) Civil Aeronautics Board; chairman, members, officers, and offices; transfer to National Transportation Safety Board.
(e) Interstate Commerce Commission; functions, powers, and duties relating to safety appliances and equipment on railroad engines and cars, protection of employees and travelers, hours of service, medals for heroism, explosives and other dangerous articles, standard time zones and daylight saving time; safety of operation and equipment.

Sec.
(f) Retention by Interstate Commerce Commission of powers and functions not expressly transferred; railroad and motor carrier safety under Federal Railroad and Federal Highway Administrators; review of administrative decisions.
(g) Department of the Army; functions, powers, and duties of the Secretary of the Army relating to water vessel anchorages, drawbridge operating regulations, obstructive bridges, tolls, prevention of pollution of the sea by oil, and location and clearance of bridges and causeways on navigable waters.
(h) Applicability of administrative procedure and judicial review provisions of Title 5.
(i) Alaska Railroad.
1656. Transportation investment standards; promulgation by Secretary of Transportation; use of standards and criteria in surveys, plans, and reports of Federal agencies.
1657. Administrative provisions.
(a) Authority of Secretary to employ personnel and prescribe their authority and duties.
(b) Temporary or intermittent employment of experts and consultants.
(c) Detailing of participating military personnel for service in Department of Transportation.
(d) Military personnel assigned to Department of Transportation; annual report to Congress on assignment of personnel.
(e) Delegation and redelegation of powers and functions.
(f) Transfer of personnel, assets, liabilities, contracts, property, records, and unexpended funds of the Federal Aviation Agency to the Secretary of Transportation.
(g) Determination of personnel and property transfers to Secretary of Transportation; transfer of property and funds of Civil Aeronautics Boards to National Transportation Safety Board.
(h) Prohibition against reduction in classification or compensation of transferees for one year.
(i) Lapse of transferred offices and agencies; compensation of executive positions upon continuity of service.
(j) Administrative services; establishment of capital fund; transactions involving the capital fund.
(k) Seal of office.
(l) Authority to provide necessary facilities and services for personnel stationed in remote localities.
(m) Authority to accept and hold gifts and bequests for purpose of aiding or facilitating the work of the Department.
(n) Authority to fill requests for statistical compilations covering Department matters on reimbursable basis.
(o) Advisory committees; appointment, compensation.
(p) Appointment of Coast Guard personnel on active duty to serve with Department; retired Coast Guard personnel.
(q) Contracts with private agencies for research; capabilities of research agency; dissemination of resulting data.
1657a. Minority Resource Center.
(a) Establishment.
(b) Advisory Committee; membership.
(c) Powers and functions.
(d) Assistance in performance of functions by United States Railway Association, etc.
(e) Definition.
1658. Annual reports.
1659. Separability of provisions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1431 of this title; title 7 section 136q; title 42 sections 1857f-10, 4916, 4917.

§ 1651. Congressional declaration of purpose

(a) The Congress hereby declares that the general welfare, the economic growth and stability of the Nation and its security require the development of national transportation policies and programs conducive to the provision of fast, safe, efficient, and convenient transportation at the lowest cost consistent therewith and with other national objectives, including the efficient utilization and conservation of the Nation's resources.

(b)(1) The Congress therefore finds that the establishment of a Department of Transportation is necessary in the public interest and to assure the coordinated, effective administration of the transportation programs of the Federal Government; to facilitate the development and improvement of coordinated transportation service, to be provided by private enterprise to the maximum extent feasible; to encourage cooperation of Federal, State, and local governments, carriers, labor, and other interested parties toward the achievement of national transportation objectives; to stimulate technological advances in transportation; to provide general leadership in the identification and solution of transportation problems; and to develop and recommend to the President and the Congress for approval national transportation policies and programs to accomplish these objectives with full and appropriate consideration of the needs of the public, users, carriers, industry, labor, and the national defense.

(2) It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.

(Pub. L. 89-670, § 2, Oct. 15, 1966, 80 Stat. 931.)

EFFECTIVE DATE

Section 16, formerly § 15, of Pub. L. 89-670 as renumbered by Pub. L. 94-210, title IX, § 906, Feb. 5, 1976, 90 Stat. 149 provided that:

"(a) This Act [see Short Title note below] shall take effect ninety days after the Secretary first takes office, or on such prior date after enactment of this Act [Oct. 15, 1966] as the President shall prescribe and publish in the Federal Register [See Ex. Ord. No. 11340 set out below.]

"(b) Any of the officers provided for in this Act may (notwithstanding subsection (a)) be appointed in the manner provided for in this Act, at any time after the date of enactment of this Act [Oct. 15, 1966]. Such officers shall be compensated from the date they first take office, at the rates provided for in this Act. Such compensation and related expenses of their offices shall be paid from funds available for the functions to be transferred to the Department pursuant to this Act."

SHORT TITLE

Section 1 of Pub. L. 89-670 provided: "That this Act [enacting this chapter, amending sections 312 and 1376 of this title, section 19 of Title 3, The President, sections 101, 5312, 5313, 5314, 5315, 5316, and 5317 of Title 5, Government Organization and Employees, section 801 of Title 10, Armed Forces, section 1404 of Title 15, Commerce and Trade, section 1020 of Title 18, Crimes and Criminal Procedure, section 401 note of Title 23, Highways, section 213 of Title 29, Labor, sections 981 and 1102 of Title 33, Navigation and Navigable Waters, sections 201 and 206 of Appendix to Title 40, Public Buildings, Property, and Works, and section 123 of Title 50, War and National Defense, and enacting material set out as notes under this section, section 101 of Title 5, and section 981 of Title 33 may be cited as the 'Department of Transportation Act'."

SAVINGS PROVISIONS; CONTINUATION OF ORDERS, DETERMINATIONS, RULES, REGULATIONS, ETC.; PENDING PROCEEDINGS; STATUTORY REFERENCES TO TRANSFERRED OFFICES OR OFFICERS DEEMED REFERENCES TO TRANSFEREES

Section 13, formerly § 12 of Pub. L. 89-670 as renumbered by Pub. L. 94-210, title IX, § 906, Feb. 5, 1976, 90 Stat. 149, provided that:

"(a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

"(1) which have been issued, made, granted, or allowed to become effective—

"(A) under any provision of law amended by this Act [see Short Title note set out above], or

"(B) in the exercise of duties, powers, or functions which are transferred under this Act,

by (i) any department or agency, any functions of which are transferred by this Act, or (ii) any court of competent jurisdiction, and

"(2) which are in effect at the time this Act takes effect [see Effective Date note set out above], shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Secretary, Administrators, Board, or General Counsel (in the exercise of any authority respectively vested in them by this Act), by any court of competent jurisdiction, or by operation of law.

"(b) The provisions of this Act shall not affect any proceedings pending at the time this section takes effect before any department or agency (or component thereof), functions of which are transferred by this Act; but such proceedings, to the extent that they relate to functions so transferred, shall be continued before the Department. Such proceedings, to the extent they do not relate to functions so transferred, shall be continued before the department or agency before which they were pending at the time of such transfer. In either case orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Secretary, Administrators, Board, or General Counsel (in the exercise of any authority respectively vested in them by this Act), by a court of competent jurisdiction, or by operation of law.

"(c)(1) Except as provided in paragraph (2)—

"(A) the provisions of this Act shall not affect suits commenced prior to the date this section takes effect, and

"(B) in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this Act had not been enacted.

No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against any department or agency, functions of which are transferred by this Act, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this Act. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or such official of the Department as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this subsection.

"(2) If before the date on which this Act takes effect, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this Act—

"(A) such department or agency is transferred to the Secretary, or

"(B) any function of such department, agency, or officer is transferred to the Secretary,

then such suit shall be continued by the Secretary (except in the case of a suit not involving functions transferred to the Secretary, in which case the suit shall be continued by the department, agency, or officer which was a party to the suit prior to the effective date of this Act).

"(d) With respect to any function, power, or duty transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to any department or agency, officer or office so transferred or functions of which are so transferred shall be deemed to mean the officer or agency in which this Act vests such function after such transfer."

SUBMISSION OF PROPOSED CODIFICATION OF ALL LAWS TRANSFERRED TO OR VESTED IN SECRETARY OF TRANSPORTATION

Pub. L. 89-670, Oct. 15, 1966, § 15, formerly 14, 80 Stat. 950, authorized the Secretary of Transportation to submit to the Congress within two years of Apr. 1, 1967, a proposed codification of all laws containing the powers, duties, and functions transferred to or vested in the Secretary or the Department by Pub. L. 89-670.

EX. ORD. NO. 11340. EFFECTIVE DATE

Ex. Ord. No. 11340, Mar. 30, 1967, 32 F.R. 5453, provided:

By virtue of the authority vested in me as President of the United States by Section 15 [now section 16] of the Department of Transportation Act (Public Law 89-670, approved October 15, 1966; 80 Stat. 950) [set out as an Effective Date note above] April 1, 1967, is hereby prescribed as the date on which the Department of Transportation Act [see Short Title note set out above] shall take effect.

LYNDON B. JOHNSON.

§ 1652. Establishment of Department

(a) Designation and appointment of Secretary of Transportation

There is hereby established at the seat of government an executive department to be known as the Department of Transportation

(hereafter referred to in this chapter as the "Department"). There shall be at the head of the Department a Secretary of Transportation (hereafter referred to in this chapter as the "Secretary"), who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) Deputy Secretary; appointment; functions, powers, and duties

There shall be in the Department a Deputy Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Secretary (or, during the absence or disability of the Deputy Secretary, or in the event of a vacancy in the office of a Deputy Secretary, an Assistant Secretary or the General Counsel, determined according to such order as the Secretary shall prescribe) shall act for, and exercise the powers of the Secretary, during the absence or disability of the Secretary or in the event of a vacancy in the office of Secretary. The Deputy Secretary shall perform such functions, powers, and duties as the Secretary shall prescribe from time to time.

(c) Assistant Secretaries; General Counsel; appointment; functions, powers, and duties

There shall be in the Department four Assistant Secretaries and a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions, powers, and duties as the Secretary shall prescribe from time to time.

(d) Assistant Secretary for Administration; appointment; functions, powers, and duties

There shall be in the Department an Assistant Secretary for Administration, who shall be appointed, with the approval of the President, by the Secretary under the classified civil service who shall perform such functions, powers, and duties as the Secretary shall prescribe from time to time.

(e) Federal Highway Administration; Federal Railroad Administration; Federal Aviation Administration; establishment; Administrators and Deputy Federal Aviation Administrator; appointment, functions, powers and duties; transfer of functions

(1) There is hereby established within the Department a Federal Highway Administration; a Federal Railroad Administration; and a Federal Aviation Administration. Each of these components shall be headed by an Administrator, and in the case of the Federal Aviation Administration there shall also be a Deputy Administrator. The Administrators and the Deputy Federal Aviation Administrator shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The qualifications of the Administrator of the Federal Aviation Agency specified in section 1341(b) of this title, and the qualifications and status of the Deputy Administrator specified in section 1342(b) of this title shall apply, respectively, to the Administrator and Deputy Administrator of the Federal Aviation Administration. However, nothing in this chapter shall be construed to preclude the appointment of the present Administrator of the Federal Aviation Agency as Administrator of the Federal Aviation Administration in accordance with the provisions of the Act of June 22, 1965, as amended (79 Stat. 171).

(3) In addition to such functions, powers, and duties as are specified in this chapter to be carried out by the Administrators, the Administrators and the Commandant of the Coast Guard shall carry out such additional functions, powers, and duties as the Secretary may prescribe. The Administrators and the Commandant of the Coast Guard shall report directly to the Secretary.

(4) The functions, powers, and duties specified in this chapter to be carried out by each Administrator shall not be transferred elsewhere in the Department unless specifically provided for by reorganization plan submitted pursuant to provisions of chapter 9 of title 5 or by statute.

(f) National Traffic Safety Bureau; National Highway Safety Bureau; establishment; appointment of Directors; transfer and continuation of office of Federal Highway Administrator under title of Director of Public Roads

(1) The Secretary shall carry out the provisions of the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1381 et seq.] through a National Traffic Safety Bureau (hereafter referred to in this paragraph as "Bureau"), which he shall establish in the Department of Transportation. The Bureau shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate. All other provisions of the National Traffic and Motor Vehicle Safety Act of 1966 shall apply.

(2) The Secretary shall carry out the provisions of the Highway Safety Act of 1966 [23 U.S.C. 401 et seq.] (including chapter 4 of title 23) through a National Highway Safety Bureau (hereafter referred to in this paragraph as "Bureau"), which he shall establish in the Department of Transportation. The Bureau shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate. All other provisions of the Highway Safety Act of 1966 shall apply.

(3) The President is authorized, as provided in section 201 of the Highway Safety Act of 1966, to carry out the provisions of the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1381 et seq.] through the Bureau and Director authorized by section 201 of the Highway Safety Act of 1966.

(4) The Office of Federal Highway Administrator, created by section 303 of title 23, is hereby transferred to and continued within the Department under the title Director of Public Roads. The Director shall be the operating head of the Bureau of Public Roads, or any other agency created within the Department to carry out the primary functions carried out immediately before the effective date of this Act by the Bureau of Public Roads.

(Pub. L. 89-670, § 3, Oct. 15, 1966, 80 Stat. 931; Pub. L. 90-83, § 10(b). Sept. 11, 1967, 81 Stat. 224; Pub. L. 93-496, § 16(a), Oct. 28, 1974, 88 Stat. 1533.)

REFERENCES IN TEXT

This chapter referred to in subsecs. (a), (e)(2), (3), read in the original "this Act", meaning Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, known as the Department of Transportation Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1651 of this title and Tables volume.

The Act of June 22, 1965, as amended (79 Stat. 171), referred to in subsec. (e)(2), is Pub. L. 89-46, June 22, 1965, 79 Stat. 171, which is set out as a note under section 1341 of this title.

The National Traffic and Motor Vehicle Safety Act of 1966, referred to in subsec. (f)(1) and (3), is Pub. L. 89-563, Sept. 9, 1966, 80 Stat. 718, as amended, which is classified generally to chapter 38 (§ 1381 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1381 of Title 15 and Tables volume.

The Highway Safety Act of 1966, referred to in subsec. (f)(2), is Pub. L. 89-564, Sept. 9, 1966, 80 Stat. 731, as amended, which is classified principally to chapter 4 (§ 401 et seq.) of Title 23, Highways. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 23 and Tables volume.

Section 201 of the Highway Safety Act of 1966, referred to in subsec. (f)(3), is set out as a note under section 401 of Title 23.

The effective date of this Act, referred to in subsec. (f)(4), means the effective date of Pub. L. 89-670. See section 16 of Pub. L. 89-670 set out as an Effective Date note under section 1651 of this title.

AMENDMENTS

1974—Subsec. (b). Pub. L. 93-496 substituted "Deputy Secretary" for "Under Secretary" wherever appearing therein.

1967—Subsec. (f). Pub. L. 90-83 struck out provisions covering the compensation at level V of the Executive Schedule for the Director of the National Traffic Safety Bureau and the Director of the National Highway Safety Bureau.

TRANSFER OF FUNCTIONS

The Coast Guard was transferred to the Department of Transportation, and all functions, powers, and duties relating to the Coast Guard of the Secretary of the Treasury and of all other officers and offices of the Department of the Treasury were transferred to the Secretary of Transportation by Pub. L. 89-670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89-670, however, provided that notwithstanding such transfer of functions, the Coast Guard shall operate as part of the Navy in time of war or when the President directs as provided in section 3 of Title 14, Coast Guard. See section 1655(b) of this title.

The Bureau of Public Roads was eliminated as a primary organizational unit under the Director of Public Roads in the Department of Transportation and the person who headed such Bureau in the post of Director of Public Roads immediately prior to the enactment of Pub. L. 91-605, Dec. 31, 1970, 84 Stat. 1713, known as the Federal-Aid Highway Act of 1970, was authorized to act as Deputy Administrator of the Federal Highway Administration created by such Act, see section 114(c) of Pub. L. 91-605, set out as a note under section 303 of Title 23, Highways.

NATIONAL HIGHWAY SAFETY BUREAU

Administration of National Traffic and Motor Vehicle Safety Act through the Bureau and its Director, see Ex. Ord. No. 11357, June 6, 1967, 32 F.R. 8225, set out as a note under section 1392 of Title 15, Commerce and Trade.

EX. ORD. NO. 11382. AMENDMENT OF EXECUTIVE ORDERS RELATING TO FUNCTIONS OF TRANSPORTATION DEPARTMENT

Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247, as amended by Ex. Ord. No. 11428, Sept. 5, 1968, 32 F.R. 12719, provided:

WHEREAS the Department of Transportation Act (Public Law 89-670, 80 Stat. 931) [See Short Title note set out above], hereinafter referred to as the Act, established the Department of Transportation in the Executive Branch to be headed by a Secretary of Transportation and to be composed of the Federal Aviation Administration, the Federal Highway Administration, the Federal Railroad Administration, the Coast Guard, the Saint Lawrence Seaway Development Corporation and the National Transportation Safety Board; and

WHEREAS the Act vested in the Secretary of Transportation new major responsibilities in the field of transportation, including that of exercising leadership under the direction of the President in transportation matters, and also transferred to the Secretary of Transportation and to certain instrumentalities of the Department of Transportation many functions involving transportation; and

WHEREAS, the transportation functions established or transferred by the Act involve additional activities which are currently assigned by Executive orders and other Executive documents to officers and agencies from whom the related statutory functions have been transferred by the Act; and

WHEREAS, it is appropriate and desirable with the establishment of the Department of Transportation that certain authority and duties concerned with transportation be assigned to the Secretary of Transportation or to officers and agencies under his jurisdiction:

NOW, THEREFORE, by virtue of the authority vested in me by section 301 of Title 3 of the United States Code and by the laws cited as authority for the Executive orders amended below, and as President of the United States, it is ordered as follows:

SECTION 1. *Classified information.* (a) Executive Order No. 10501 of November 5, 1953, as amended, is further amended by—

(1) inserting "Department of Transportation" in the list of departments and agencies in subsection (a) of section 2 thereof after "Department of Labor" and

(2) deleting "Federal Aviation Agency" from that list. The Department of Transportation shall be deemed to have had authority for classification of information and material from April 1, 1967.

(b) Executive Order No. 10865 of February 20, 1960, as amended, is further amended by striking out the words "Administrator of the Federal Aviation Agency", "Deputy Administrator of the Federal Aviation Agency", and "Federal Aviation Agency" and inserting in place thereof "Secretary of Transportation", "Under Secretary of Transportation", and "Department of Transportation", respectively.

SEC. 2. Federal Airport Act. Executive Order No. 10536 of June 9, 1954, is amended by striking out the words "Administrator of Civil Aeronautics" and inserting in place thereof the words "Secretary of Transportation".

SEC. 3. *Life saving medals.* The regulations prescribed by section 1 of Executive Order No. 10765 of April 24, 1958 (being §§ 9.1 *et seq.* of Chapter I of Title 49 of the Code of Federal Regulations) are amended by—

(1) striking out the words "Interstate Commerce Commission" and "Commission" in §§ 9.1 and 9.3 and inserting in place thereof "Department of Transportation" and "Department", respectively, and

(2) striking out all of §§ 9.4, 9.5, and 9.6 and inserting in place thereof the following:

"§ 9.4 *Review of evidence; recommendations.* Applications for medals, together with all affidavits, testimony, and other evidence received in connection therewith, and the records developed in connection with investigations initiated by the Department of

Transportation, shall be referred to a committee of three Department officials designated by the Secretary of Transportation. One of such officials shall be directly concerned with railroad safety, and another with motor-carrier safety. The committee shall carefully consider each application or record, and after thoroughly weighing the evidence shall prepare an abstract or brief covering the case and forward it, together with the committee's recommendation, to the Secretary of Transportation for his consideration.

"§ 9.5 *Award of Medals.* Upon approval by the Secretary of Transportation of the committee's recommendation in any case, the Secretary shall make the award of the medal in the name and on behalf of the President.

"§ 9.6 *Adoption and revision of designs.* The Secretary of Transportation is authorized to adopt and revise the existing designs for the medal, rosette, and ribbon provided for by the Act."

SEC. 4. *Contracting authority.* Executive Order No. 10789 of November 14, 1958, as amended, is further amended by inserting the words "Department of Transportation" in the list of departments and agencies in section 21 thereof after the words "Department of Commerce" and striking out of that list the words "Federal Aviation Agency".

SEC. 5. *Assignment of claims.* (a) Executive Order No. 10840 of September 30, 1959, is amended by striking out the words "Federal Aviation Agency" in the text and heading and inserting in place thereof the words "Federal Aviation Administration".

(b) The utilization by the Federal Aviation Administration of the authority made available to it by section 5(a) of this order shall be subject to direction and control by the Secretary of Transportation.

SEC. 6. *Extra-territorial jurisdiction.* (a) Executive Order No. 10854 of November 27, 1959 (as limited by section 7 of Executive Order No. 11326 of February 13, 1967), is amended by striking out the words "Administrator of the Federal Aviation Agency" and "Administrator" and inserting in place thereof the words "Secretary of Transportation".

(b) Executive Order No. 11326 of February 13, 1967, is hereby amended by striking out the words "Administrator of the Federal Aviation Agency" and inserting in place thereof the words "Secretary of Transportation".

SEC. 7. *International aviation.* (a) The Presidential Memorandum of August 11, 1960, on the subject of Executive Order No. 10883 of the same date, is amended by—

(1) striking out the words "Administrator of the Federal Aviation Agency" and "Administrator" and inserting in place thereof the words "Secretary of Transportation" and

(2) striking out the words "Federal Aviation Agency" and inserting in place thereof the words "Department of Transportation" and

(3) striking out the second sentence of the third paragraph of the memorandum.

(b) The Presidential Letter of June 22, 1963, assigning responsibility to the Secretary of State regarding international aviation policy, is amended by—

(1) striking out the words "Federal Aviation Agency" in the second paragraph and inserting in place thereof the words "Department of Transportation" and

(2) striking out the last two sentences of the third paragraph and inserting in place thereof the following: "The other members will be the Secretary of Defense, the Secretary of Commerce, and the Secretary of Transportation, or their respective representatives, the Chairman of the Civil Aeronautics Board, and the Administrator of the Agency for International Development. The Secretary of Transportation will serve as vice chairman."

SEC. 8. *Interdepartmental Highway Safety Board.* [Deleted by Ex. Ord. No. 11515, Mar. 13, 1970, 35 F.R. 4543].

SEC. 9. *Allowances and benefits.* Executive Order No. 11137 of January 7, 1964, is amended by—

(1) striking out the words "Secretary of the Treasury" and inserting in place thereof the words "Secretary of Transportation" and

(2) striking out all of section 101 and inserting in place thereof the following:

"SECTION 101. The term 'employee', as defined in 5 U.S.C. 5921(3), is hereby further defined as including civilian employees, compensated from non-appropriated funds, of the instrumentalities of the United States under the jurisdiction of the armed forces covered by 5 U.S.C. 2105(c)." and

(3) striking out the words "Section 203 of the Overseas Differentials and Allowances Act (5 U.S.C. 3035)" in section 102 and inserting in place thereof the words "5 U.S.C. 5922(c)" and

(4) striking out the words "Section 1 of the Act of June 19, 1952, ch. 444 (5 U.S.C. 150k)" in section 201 and inserting in place thereof the words "5 U.S.C. 2105(c)" and

(5) striking out the words "Section 111(6) of the Overseas Differentials and Allowances Act (5 U.S.C. 3032(6)" in section 202(b) and inserting in place thereof the words "5 U.S.C. 5921(6)".

SEC. 10. *Supersonic Transport.* [Revoked by Ex. Ord. No. 11428, Sept. 5, 1968, 33 F.R. 12719.]

SEC. 11. *Wartime status.* Executive Order No. 11161 of July 7, 1964, is hereby amended by—

(1) striking out the words "Administrator of the Federal Aviation Agency" the first time they appear in section 1 and the word "Administrator" in section 2 and inserting in place thereof the words "Secretary of Transportation" and

(2) striking out the words "Administrator of the Federal Aviation Agency" the other times they appear and inserting in place thereof the words "Federal Aviation Administrator" and

(3) striking out the words "Federal Aviation Agency" in the text and heading and inserting in place thereof the words "Federal Aviation Administration" and

(4) striking out the word "Secretary" in section 2 and inserting in place thereof the words "Secretary of Defense".

SEC. 12. *Alaska Development Committees.* Executive Order No. 11182 of October 2, 1964, is amended by striking out the words "Administrator of the Federal Aviation Agency" and inserting the words "Secretary of Transportation".

SEC. 13. *Coast Guard.* The Executive Orders listed below are further amended by striking out the words "Secretary of the Treasury" and inserting in place thereof the words "Secretary of Transportation":

(1) Executive Order No. 10448 of April 22, 1953, as amended

(2) Executive Order No. 10631 of August 17, 1955

(3) Executive Order No. 10977 of December 4, 1961

(4) Executive Order No. 11016 of April 25, 1962

(5) Executive Order No. 11046 of August 24, 1962

(6) Executive Order No. 11079 of January 25, 1963

(7) Executive Order No. 11157 of June 22, 1964, as amended

(8) Executive Order No. 11190 of December 29, 1964

(9) Executive Order No. 11231 of July 8, 1965

(10) Executive Order No. 11239 of July 31, 1965

SEC. 14. *Redelegation of authority.* Unless prohibited by law or otherwise specified in the applicable order, and in addition to any other applicable authority to delegate and redelegate, the Secretary of Transportation and the Federal Aviation Administrator may redelegate and authorize successive redelegations of any authority conferred in this order or the orders amended by this order.

SEC. 15. *Prior actions.* All orders, determinations, rules, regulations, permits, contracts, agreements, interpretations, rulings, directives, certificates, circulars, policies, licenses, privileges, awards, and other actions relating to any function affected by this order shall remain in effect according to their terms, except for the substitution of the appropriate official by or under the authority of this order, until modified, terminated, superseded, set aside, amended, or revoked by appropriate authority, and nothing in this order

shall affect the validity or force of anything done under previous delegations or other assignments of the functions affected by this order.

SEC. 16. *Revocations.* The following are revoked:

(1) Executive Order No. 10534 of June 9, 1954

(2) Executive Order No. 10771 of June 20, 1958

(3) Executive Order No. 10858 of January 13, 1960

(4) Executive Order No. 10968 of October 10, 1961.

LYNDON B. JOHNSON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1657 of this title; title 23 section 303.

§ 1652a. Regional Organization of Federal Railroad Administration; administration and enforcement of railroad safety laws

The Federal Railroad Administration shall be divided on a geographical basis into not less than 8 safety offices for purposes of administering and enforcing all Federal railroad safety laws. The Secretary shall retain full and final responsibility for all acts taken pursuant to Federal railroad safety laws and for the establishment of all policies with respect to implementation of such laws, and shall be responsible for insuring that all such laws are administered and enforced uniformly among such offices.

(Pub. L. 94-348, § 6, July 8, 1976, 90 Stat. 820.)

CODIFICATION

Section was enacted as a part of Pub. L. 94-348, known as the Federal Railroad Safety Authorization Act of 1976, and not as a part of Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, known as the Department of Transportation Act, which comprises this chapter.

§ 1653. General provisions

(a) Responsibilities of Secretary of Transportation; leadership, consultation, and coordination

The Secretary in carrying out the purposes of this chapter shall, among his responsibilities, exercise leadership under the direction of the President in transportation matters, including those affecting the national defense and those involving national or regional emergencies; provide leadership in the development of national transportation policies and programs, and make recommendations to the President and the Congress for their consideration and implementation; promote and undertake development, collection, and dissemination of technological, statistical, economic, and other information relevant to domestic and international transportation; consult and cooperate with the Secretary of Labor in gathering information regarding the status of labor-management contracts and other labor-management problems and in promoting industrial harmony and stable employment conditions in all modes of transportation; promote and undertake research and development relating to transportation, including noise abatement, with particular attention to aircraft noise; consult with the heads of other Federal departments and agencies on the transportation requirements of the Government, including the procurement of transportation or the operation of their own transport services in order to encourage them to establish and observe policies consistent with the maintenance of a coordinated transportation system; and consult and cooperate with State and local governments, carriers, labor, and other interested parties, including, when appropriate, holding informal public hearings.

(b) Congressional policy standards for transportation; prohibition against adoption of standards or policy without appropriate Congressional action

(1) In carrying out his duties and responsibilities under this chapter, the Secretary shall be governed by all applicable statutes including the policy standards set forth in the Federal Aviation Act of 1958, as amended [49 U.S.C. 1301 et seq.]; the national transportation policy of the Interstate Commerce Act, as amended; title 23, relating to Federal-aid highways; and title 14, titles 52 and 53 of the Revised Statutes, the Act of April 25, 1940, as amended, and the Act of September 2, 1958, as amended, relating to the United States Coast Guard.

(2) Nothing in this chapter shall be construed to authorize, without appropriate action by Congress, the adoption, revision, or implementation of—

(A) any transportation policy, or

(B) any investment standards or criteria.

(3) In exercising the functions, powers, and duties conferred on and transferred to the Secretary by this chapter, the Secretary shall give full consideration to the need for operational continuity of the functions transferred, to the need for effectiveness and safety in transportation systems, and to the needs of the national defense.

(c) Judicial review of orders of Secretary and Administrators; applicability

Orders and actions of the Secretary in the exercise of functions, powers, and duties transferred under this chapter, and orders and actions of the Administrators pursuant to the functions, powers, and duties specifically assigned to them by this chapter, shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the department or agency exercising such functions, powers, and duties immediately preceding their transfer. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function transferred by this chapter shall apply to the exercise of such functions by the Secretary or the Administrators. This subsection shall not apply to functions, powers, and duties transferred to the Secretary from the Interstate Commerce Commission under section 1655(e)(1) through (4) and (6)(A) of this title.

(d) Carryover of authority to Secretary and Administrators from departments and agencies formerly exercising functions and duties

In the exercise of the functions, powers, and duties transferred under this chapter, the Secretary and the Administrators shall have the same authority as that vested in the department or agency exercising such functions, powers, and duties immediately preceding their transfer, and their actions in exercising such functions, powers, and duties shall have the same force and effect as when exercised by such department or agency.

(e) Safety record of applicants seeking operating authority from Interstate Commerce Commission

It shall be the duty of the Secretary—

(1) to promptly investigate the safety compliance records in the Department of each applicant seeking operating authority from the Interstate Commerce Commission (referred to in this subsection as the "Commission") and to report his findings to the Commission;

(2) when the safety record of an applicant for permanent operating authority, or for approval of a proposed transaction involving transfer of operating authority, fails to satisfy the Secretary, to intervene and present evidence of such applicant's fitness in Commission proceedings;

(3) to furnish promptly upon request of the Commission a statement regarding the safety record of any applicant seeking temporary operating authority from the Commission; and

(4)(A) to furnish upon request of the Commission a complete report of the safety compliance of any carrier, (B) to have made such additional inspections or safety compliance surveys which the Commission deems necessary or desirable in order to process an application or to determine the fitness of a carrier, and (C) if the Commission so requests, to intervene and present evidence in any proceeding in which a determination of fitness is required.

(f) Maintenance and enhancement of natural beauty of land traversed by transportation lines

It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed. After August 23, 1968, the Secretary shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use.

(g) Consultation with Secretary of Housing and Urban Development; annual report to the President for submission to Congress

The Secretary and the Secretary of Housing and Urban Development shall consult and exchange information regarding their respective transportation policies and activities; carry on joint planning, research and other activities; and coordinate assistance for local transportation projects. They shall jointly study how Federal policies and programs can assure that urban transportation systems most effectively serve both national transportation needs and the comprehensively planned development of urban areas. They shall, within one year after the effective date of this Act, and annually thereafter, report to the President, for submission to the Congress, on their studies and other activities under this subsection, including any legislative recommendations which they determine to be desirable. The Secretary and the Secretary of Housing and Urban Development shall study and report within one year after the effective date of this Act to the President and the Congress on the logical and efficient organization and location of urban mass transportation functions in the Executive Branch.

(h) Model intermodal transportation terminal at Union Station; authorization for design, plan, and coordination of construction; lease or transfer of space; time for completion of design, plans and construction; authorization of appropriations; application of other laws

(1) The Secretary is authorized, in consultation with the Secretary of the Interior, to design, plan, and coordinate the construction of a model intermodal transportation terminal at Union Station in the District of Columbia. Such terminal may combine the new railroad passenger station described in section 802(a)(4) of title 40, and accommodations for such other modes of transportation as the Secretary deems appropriate. To the extent practicable, the Secretary shall incorporate into the design and plans for such intermodal transportation terminal features which will make such facility a model facility and which will attract private investors willing to undertake the development and construction of the terminal.

(2) Notwithstanding any provision of Public Law 90-264 [40 U.S.C. 801 et seq.], in order to facilitate construction of such model intermodal transportation terminal, the Secretary of the Interior shall lease or transfer such space (including air space), which is not required for purposes of the National Visitor Center, as the Secretary of the Interior holds or may acquire north of the Union Station Building to such party or parties and upon such terms and conditions as the Secretary deems appropriate, notwithstanding section 303b of title 40. The Secretary and the Secretary of the Interior may, to the extent required to complete a visitor center, agree to joint use of the concourse.

(3) The design and plans for the intermodal terminal shall be completed within 2 years following October 28, 1974. The construction of the intermodal terminal shall be completed within 5 years following October 28, 1974.

(4) There is authorized to be appropriated to the Secretary, for the purposes of carrying out this subsection, such sums as are necessary, not to exceed $5,000,000.

(5) Nothing in this subsection shall be construed as relieving the Washington Terminal Company, its successors or assigns, from the obligation to finance and construct a new railroad passenger station in compliance with the terms of section 802(a)(4) of title 40.

(i) Conversion of railroad terminals into intermodal transportation terminals; assistance by Secretary; criteria for financial assistance; consultations; applications; preference; recordkeeping requirements; audit and examination of books, etc.; authorization of appropriations; definitions; eligibility under other Federal programs or plans

(1) The Secretary shall provide financial, technical, and advisory assistance in accordance with this subsection for the purpose of (A) promoting on a feasibility demonstration basis the conversion of not less than three railroad passenger terminals into intermodal transportation terminals; (B) preserving railroad passenger terminals that have a reasonable likelihood of being converted or otherwise maintained pending the formulation of plans for reuse; (C) acquiring and utilizing space in suitable buildings of historic or architectural significance, unless the use of such space would not prove feasible and prudent compared with available alternatives; and (D) stimulating State and local governments, local and regional transportation authorities, common carriers, philanthropic organizations, and other responsible persons to develop plans for the conversion of railroad passenger terminals into intermodal transportation terminals and civic and cultural activity centers.

(2) Financial assistance for the purpose set forth in paragraph (1)(A) of this subsection shall be granted in accordance with the following criteria: (A) the railroad terminal can be converted to accommodate such other modes of transportation as the Secretary deems appropriate, including motorbus transportation, mass transit (rail or rubber tire), and airline ticket offices and passenger terminal providing direct transportation to area airports; (B) the railroad passenger terminal is listed on the National Register of Historic Places maintained by the Secretary of the Interior; (C) the architectural integrity of the railroad passenger terminal will be preserved and such judgment is concurred in by consultants recommended by the Chairman of the National Endowment of the Arts and the Advisory Council on Historic Preservation and retained for this purpose by the Secretary; (D) to the extent practicable, the use of station facilities for transportation purposes may be combined with use for other civic and cultural activities, especially when such use is recommended by the Advisory Council on Historic Preservation or the Chairman of the National Endowment for the Arts, or the consultants retained by the Secretary upon their recommendation; and (E) the railroad passenger terminal and the conversion project meet such other criteria as the Secretary shall develop and promulgate in consultation with the Chairman of the National Endowment of the Arts and the Advisory Council on Historic Preservation. Any grant made by the Secretary under this paragraph shall not exceed 60 per centum of the total cost of conversion of a railroad passenger terminal into an intermodal transportation terminal.

(3) Financial assistance for the purpose set forth in paragraph (1)(B) of this subsection may be granted in accordance with regulations, to any responsible person (including a governmental entity) who is empowered by applicable law, qualified, prepared, and committed, on an interim basis pending the formulation of plans for reuse, to maintain (and prevent the demolition, dismantling, or further deterioration of) a railroad passenger terminal: *Provided*, That (A) such terminal has, in the opinion of the Secretary, a reasonable likelihood of being converted to or conditioned for reuse as an intermodal transportation terminal, a civic or cultural activities center, or both; and (B) planning activity aimed at conversion or reuse has commenced and is proceeding in a competent manner. Funds appropriated for the purpose of this paragraph and paragraph (1)(B) of this subsection shall be expended in the manner most likely to maximize the preservation of railroad passenger terminals capable reasonably of conversion to intermodal transportation terminals or which are listed in the National Register of Historic Places maintained by the Secretary of the Interior or which are recommended (on the basis of architectural integrity and quality) by the Chairman of the National Endowment for the Arts or the Advisory Council on Historic Preservation. The amount of the Federal share of any grant under this paragraph shall not exceed 60 per centum of the total cost of such interim maintenance for a period not to exceed five years.

(4) Acquisitions made for the purpose set forth in paragraph (1)(C) of this subsection shall be made only after consultation with the Chairman of the National Endowment for the Arts and the Advisory Council on Historic Preservation.

(5) Financial assistance for the purpose set forth in paragraph (1)(D) of this subsection may be granted, in accordance with regulations, to a qualified person (including a governmental entity) who is prepared to develop practicable plans meeting the zoning, land use, and other requirements of the applicable State and local jurisdictions in which the rail passenger terminal is located as well as requirements under this subsection; who shall incorporate into the designs and plans proposed for the conversion of such terminal into an intermodal transportation terminal, a civic or cultural center, or both, features which reasonably appear likely to attract private investors willing to undertake the implementation of such planned conversion and its subsequent maintenance and operation; and who shall complete the designs and plans for such conversion within two years following the approval of the application for Federal financial assistance under this subsection. In making grants under this paragraph, the Secretary shall give preferential consideration to applicants whose completed designs and plans will be implemented and effectuated within three years after the date of completion. Funds appropriated for the purpose of this paragraph and paragraph (1)(D) of this subsection shall be expended in the manner most likely to maximize the conversion and continued public use of railroad passenger terminals which are listed in the National Registor of Historic Places maintained by the Secretary of the Interior or which are recommended (on the basis of architectural integrity and quality) by the Advisory Council on Historic Preservation or the Chairman of the National Endowment for the Arts. The amount of the Federal share of any grant

under this paragraph shall not exceed 60 per centum of the total cost of the project or undertaking for which the financial assistance is provided.

(6) Within ninety days after October 28, 1974, the Secretary shall issue, and may from time to time amend, regulations with respect to financial assistance under this subsection and procedures for the award of such assistance. Each application for assistance under this subsection shall be made in writing in such form and with such content and other submissions as the Secretary shall require.

(7) The National Railroad Passenger Corporation shall give preference to using station facilities that would preserve buildings of historical and architectural significance.

(8) Each recipient of financial assistance under this subsection shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance was given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit. Until the expiration of three years after completion of such project or undertaking, the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of such receipts which, in the opinion of the Secretary or the Comptroller General, may be related or pertinent to such financial assistance.

(9)(A) There is authorized to be appropriated for the purpose set forth—

(i) in paragraphs (1)(A) and (1)(C) of this subsection, not to exceed $15,000,000;

(ii) in paragraph (1)(B) of this subsection, not to exceed $2,500,000; and

(iii) in paragraph (1)(D) of this subsection, not to exceed $2,500,000.

(B) Sums appropriated for the purposes of this subsection are authorized to remain available until expended.

(10) As used in this subsection, "civic and cultural activities" include, but are not limited to, libraries, musical and dramatic presentations, art exhibitions, adult education programs, public meeting place for community groups, convention visitors and others, and facilities for carrying on activities supported in whole or in part under Federal law.

(11) Nothing in this subsection shall be construed to invalidate the eligibility of any station for funds designed to assist in its preservation or reuse under any other Federal program or statute.

(Pub. L. 89-670, § 4, Oct. 15, 1966, 80 Stat. 933; Pub. L. 90-495, § 18(b), Aug. 23, 1968, 82 Stat. 824; Pub. L. 93-496, §§ 6, 15, Oct. 28, 1974, 88 Stat. 1528, 1533; Pub. L. 93-633, title III, § 308(2), (3), Jan. 3, 1975, 88 Stat. 2173; Pub. L. 94-25, § 13, May 26, 1975, 89 Stat. 93; Pub. L. 94-210, title VII, § 706, Feb. 5, 1976, 90 Stat. 125; Pub. L. 94-348, § 8, July 8, 1976, 90 Stat. 821; Pub. L. 94-555, title II, § 219(a), Oct. 19, 1976, 90 Stat. 2629.)

REFERENCES IN TEXT

This chapter referred to in subsecs. (a), (b)(1), (2), (c), (d), read in the original "this Act", meaning Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, known as the Department of Transportation Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1651 of this title and Tables volume.

The Federal Aviation Act of 1958, as amended, referred to in subsec. (b)(1), is Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, as amended, which is classified principally to chapter 20 (§ 1301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

The national transportation policy of the Interstate Commerce Act, referred to in subsec. (b)(1), is set out in a note preceding section 1 of this title.

The Interstate Commerce Act, as amended, referred to in subsec. (b)(1), is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, which is classified generally to chapters 1, 8, 12, 13, and 19 (§§ 1 et seq., 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

Title 23, referred to in subsec. (b)(1), means Title 23, Highways.

Title 14, referred to in subsec. (b)(1), means Title 14, Coast Guard.

Title 52 of the Revised Statutes, referred to in subsec. (b)(1), consists of R.S. §§ 4399 to 4500, which are classified to sections 170, 214, 215, 222, 224, 224a, 226, 228, 229, 230 to 234, 239, 240, 361, 362, 364, 371 to 373, 375 to 382, 384, 385, 391, 391a, 392 to 394, 399 to 404, 405 to 416, 435 to 440, 451 to 453, 460, 461 to 463, 464, 466, 467 to 482, and 489 to 498 of Title 46, Shipping. For complete classification of R.S. §§ 4399 to 4500 to the Code, see Tables volume.

Title 53 of the Revised Statutes, referred to in subsec. (b)(1), consists of R.S. §§ 4501 to 4612, which are classified to sections 541 to 543, 545 to 549, 561, 562, 564 to 571, 574 to 578, 591 to 597, 600, 602 to 605, 621 to 628, 641 to 643, 644, 645, 651 to 660, 661 to 669, 674 to 679, 681 to 687, 701 to 710, and 711 to 713 of Title 46, Shipping. For complete classification of R.S. §§ 4501 to 4612 to the Code, see Tables volume.

The Act of April 25, 1940, as amended, referred to in subsec. (b)(1), is act Apr. 25, 1940, ch. 155, 54 Stat. 163, as amended, popularly known as the Motorboat Act of 1940, which is classified generally to subchapter II (§ 526 et seq.) of chapter 16 of Title 46, Shipping. For complete classification of this Act to the Code, see Tables volume.

The Act of September 2, 1958, as amended, referred to in subsec. (b)(1), means Pub. L. 85-911, Sept. 2, 1958, 72 Stat. 1754, as amended, known as the Federal Boating Act of 1958, which was classified principally to subchapter III (§ 527 et seq.) of chapter 16 of Title 46, Shipping, and was repealed by Pub. L. 92-75, § 41(a)(2), (4), Aug. 10, 1971, 85 Stat. 228, and is now covered by section 1451 et seq. of Title 46. For complete classification of this Act to the Code, see Tables volume.

Public Law 90-264, referred to in subsec. (g)(2), is Pub. L. 90-264, Mar. 12, 1968, 82 Stat. 43, as amended, popularly known as the National Visitor Center Facilities Act of 1968, and is classified generally to chapter 18 (§ 801 et seq.) of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 40 and Tables volume.

The effective date of this Act, referred to in subsecs. (f), (g), means the effective date of Pub. L. 89-670. See section 16 of Pub. L. 89-670, set out as an Effective Date note under section 1651 of this title.

CODIFICATION

In the original, subsec. (i) is set out as part of section 6 of Pub. L. 93-496. Enactment of subsec. (i) has been editorially credited to section 15 of Pub. L. 93-496 to conform to the probable intent of Congress as evidenced by the directory language of section 15 of Pub. L. 93-496.

AMENDMENTS

1976—Subsec. (c). Pub. L. 94-348 added provision that this subsection shall not apply to functions, powers, and duties transferred to Secretary from Interstate Commerce Commission under sections 1655(e)(1) to (4) and (6) of this title.

Subsec. (i)(1). Pub. L. 94-210, § 706(1), (2), added subpar. (C). Former subpar. (C) was redesignated as (D).

Subsec. (i)(4). Pub. L. 94-210, § 706(3), (4), added subsec. (i)(4). Former subsec. (i)(4) was redesignated as (i)(5).

Subsec. (i)(5). Pub. L. 94-210, § 706(1), (3), redesignated former subsec. (i)(4) as (i)(5), and, as so redesignated, substituted "(D)" for "(C)". Former subsec. (i)(5) was redesignated as (i)(6).

Subsec. (i)(6) to (8). Pub. L. 94-210, § 706(3), redesignated former subsec. (i)(5) to (7) as (6) to (8). Former subsec. (i)(6) to (8) was redesignated as (i)(7) to (9).

Subsec. (i)(9). Pub. L. 94-210, § 706(3), (5), redesignated former subsec. (i)(8) as (i)(9), and, as so redesignated, denominated existing provision as subpar. (A) and expanded applicability of (i), and added subpars. (B) and (C). Former subsec. (i)(9) was redesignated as (i)(10).

Subsec. (i)(9)(A)(ii), (iii). Pub. L. 94-555, § 219(a), substituted "$2,500,000" for "$5,000,000" in cls. (ii) and (iii).

Subsec. (i)(9)(B). Pub. L. 94-555, § 219(b), struck out subpar. (B) which dealt with planning and interim maintenance appropriations for the National Endowment for the Arts and redesignated former subpar. (C) as (B).

Subsec. (i)(9)(C). Pub. L. 94-555, § 219(b), redesignated subpar. (C) as (B).

Subsec. (i)(10), (11). Pub. L. 94-210, § 706(3), redesignated former subsec. (i)(9) and (10) as (10) and (11), respectively.

1975—Subsec. (c). Pub. L. 93-633, § 308(2), deleted from first and second sentences references to National Transportation Safety Board.

Subsec. (d). Pub. L. 93-633, § 308(3), deleted reference to National Transportation Safety Board.

Subsec. (i)(2). Pub. L. 94-25 struck out a provision requiring the Secretary to make grants not later than July 1, 1976.

1974—Subsecs. (h), (i). Pub. L. 93-496 added subsecs. (h) and (i).

1968—Subsec. (f). Pub. L. 90-495 amended subsection by inserting reference to enumerated lands "of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-555 effective on October 1, 1976, see section 303 of Pub. L. 94-555, set out as an Effective Date of 1976 Amendment note under section 543 of Title 45, Railroads.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as an Effective Date of 1968 Amendment note under section 101 of Title 23, Highways.

AUTOMOBILE INSURANCE INVESTIGATION

Congress, by Pub. L. 90-313, May 22, 1968, 82 Stat. 126, authorized and directed the Secretary of Transportation, in cooperation with those other Federal agencies which possess relevant competencies, to conduct a comprehensive study and investigation of all relevant aspects of the existing motor vehicle accident compensation system, directed the President to appoint an Interagency Advisory Committee on Compensation for Motor Vehicle Accident Losses consisting of the Secretary as Chairman and one representative each of the Departments of Commerce, Justice, Labor, Health, Education, and Welfare, and Housing and Urban Development, the Federal Trade Commission, the Interstate Commerce Commission, and the Securities and Exchange Commission, and such other Federal agencies as would be designated by the President to advise the Secretary on the preparation for and the conduct of the study, authorized the Secretary, or on the authorization of the Secretary, any officer or employee of the Department of Transportation, to hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records as the Secretary, or such officer or employee, deemed advisable, directed the Secretary to submit to the President and to the Congress interim reports from time to time and a final report not later than twenty-four months after May 22, 1968, with such final report to contain a detailed statement of the findings, conclusions, and recommendations of the Secretary, and such proposed legislation or other action as the Secretary might consider necessary to carry out his recommendations, and directed that the authority of the Secretary under such joint resolution terminate ninety days after the submission of his final report.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to the Secretary of Transportation, see Parts 1, 13, and 30 of Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, set out as a note under sections 2292 of Title 50, Appendix, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 960.

§ 1653a. Rail bank

(a) Establishment by Secretary; scope

The Secretary shall, within 180 days after February 5, 1976, and after consultation with the Secretary of the Interior and the Secretary of Commerce, in accordance with this section, establish a rail bank to consist of rail trackage and other rail properties eligible under this subsection, for purposes of preserving existing service in certain areas of the United States in which fossil fuel natural resources or agricultural production is located. The Secretary may include in such rail bank any railroad trackage or other rail properties which are listed for consideration for inclusion in a rail bank under part III, section C, of the final system plan.

(b) Acquisition, holding, and disposition of rail properties by Secretary

(1) The Secretary may acquire, by lease, purchase, or in such other manner as he considers appropriate, rail properties or any interests therein eligible for inclusion in the rail bank established under this section. Except as provided in paragraph (2) of this subsection, the Secretary may hold rail properties acquired for such rail bank, and may sell, lease, grant rights over, or otherwise dispose of interests or rights in connection with such rail properties.

(2) The Secretary may not dispose of any such rail properties pursuant to paragraph (1) of this subsection if he determines, after consultation with the Secretary of the Interior and

the Secretary of Commerce, that such disposition would adversely affect the availability of such properties for any continued necessary access to, and egress by rail from, facilities in which fossil fuels are being or can be extracted or processed.

(c) Authorization of appropriations

There are authorized to be appropriated to the Secretary for purposes of carrying out the provisions of this section such sums as are necessary, not to exceed $6,000,000. Sums appropriated pursuant to this section are authorized to remain available until expended.

(Pub. L. 94-210, title VIII, § 810, Feb. 5, 1976, 90 Stat. 146.)

CODIFICATION

Section was enacted as part of Pub. L. 94-210, known as the Railroad Revitalization and Regulatory Reform Act of 1976, and not as part of Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, known as the Department of Transportation Act, which comprises this chapter.

§ 1654. Rail service responsibilities of Secretary

(a) Development and availability of plans, proposals, and recommendations for unification or coordination projects

The Secretary may develop and make available to interested persons feasible plans, proposals, and recommendations for mergers, consolidations, reorganizations, and other unification or coordination projects for rail services (including, but not limited to, arrangements for joint use of tracks or other facilities and any acquisition or sale of assets) which the Secretary believes would result in a rail system which is more efficient, consistent with the public interest.

(b) Assistance in planning, negotiating, and effecting unification or coordination of operations and facilities

In order to achieve a more efficient, economical, and viable rail system in the private sector, the Secretary may, upon the request of any railroad and in accordance with subsections (a) through (e) of this section, assist in planning, negotiating, and effecting a unification or coordination of operations and facilities with respect to two or more railroads.

(c) Conduct of studies to determine potential cost savings and improvements resulting from unification or coordination; access to information; subpoenas

The Secretary may conduct such studies as are deemed advisable to determine the potential cost savings and possible improvements in the quality of rail services which are likely to result from unification or coordination with respect to two or more railroads, through the elimination of duplicative or overlapping operations and facilities; the reduction of switching operations; utilization of the shortest, or the most efficient, and economical routes; the exchange of trackage rights; the combining of trackage and of terminal or other facilities; the upgrading of tracks and other facilities used by two or more railroads; reduction of administrative and other expenses; and any other measures likely to reduce costs and improve rail service. For purposes of studies conducted under this section and the study described in section 901 of the Railroad Revitalization and Regulatory Reform Act of 1976, each railroad shall provide such information as may be requested by the Secretary in connection with the performance of functions under this section and such section 901. In furtherance of any of the functions or responsibilities of the Secretary under this section or such section 901, any officer or employee duly designated by the Secretary may obtain, from any railroad, information regarding the nature, kind, quality, origin, destination, consignor, consignee, and routing of property, without the consent of the consignor or consignee involved, notwithstanding the provisions of section 15(13) of the Interstate Commerce Act (49 U.S.C. 15(13)) and may, to the extent necessary or appropriate, exercise, with respect to any railroad, any of the powers described in section 203(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 713(c)), as provided therein, except that subpoenas shall be issued under the signature of the Secretary.

(d) Conferences and mediation of disputes relating to any proposed unification or coordination project; antitrust exemption for person attending or represented at conferences

When requested by one or more railroads, the Secretary may also hold conferences with respect to any proposed unification or coordination project. The Secretary may invite officers and directors of all affected railroads; representatives of employees of such railroads who may be affected; the Interstate Commerce Commission; appropriate State and local government officials, shippers, and consumer representatives; and representatives of the Federal Trade Commission and of the Attorney General to one or more such conferences with respect to such a proposal. The Secretary may mediate any dispute which may arise in connection with any proposed unification or coordination project. Persons attending or represented at any such conference shall not be liable under the antitrust laws of the United States with respect to any discussion at such conference and as to any agreements reached at such conference, which are entered into with the approval of the Secretary in order to achieve or determine a plan of action to implement any such unification or coordination project.

(e) Study of proposed merger, etc., subject to jurisdiction of Interstate Commerce Commission; applicable statutory provision for consideration of proposal; appearance before Commission

Whenever any railroad submits a proposal for a merger or other action the approval of which is subject to the jurisdiction of the Interstate Commerce Commission under section 5(2) of the Interstate Commerce Act (49 U.S.C. 5(2)), the Secretary may, if he has not already done so, conduct a study of such proposal in order to determine whether or not, in his judgment, such proposal is in accordance with the standards set forth in section 5(2)(c) of such Act (49 U.S.C. 5(2)(c)). Whenever such proposal is the subject of an application and a proceeding before such Commission, the Secretary is authorized to appear before the Commission in any proceeding held with respect to such application.

(f) Financial assistance to States for rail freight assistance programs; purposes of programs

The Secretary shall, in accordance with this section, provide financial assistance to States for rail freight assistance programs that are designed to cover—

(1) the cost of rail service continuation payments;

(2) the cost of purchasing a line of railroad or other rail properties to maintain existing or provide for future rail service;

(3) the cost of rehabilitating and improving rail properties on a line of railroad to the extent necessary to permit adequate and efficient rail freight service on such line; and

(4) the cost of reducing the costs of lost rail service in a manner less expensive than continuing rail service.

(g) Federal share of costs of rail service assistance programs; adjustments; standards and procedures for adjustment of State share of costs

The Federal share of the costs of any rail service assistance program shall be as follows: (1) 100 percent for the period from July 1, 1976 to June 30, 1977; (2) 90 percent for the period from July 1, 1977 to June 30, 1978; (3) 80 percent for the period from July 1, 1978 to June 30, 1979; and (4) 70 percent for the period from July 1, 1979 to June 30, 1981. For the period from July 1, 1979 to June 30, 1981, the Secretary may make such adjustments in the percentage level of the Federal share as may be necessary and appropriate so as not to exceed the maximum amount of funds authorized under subsection (o) of this section. The Secretary shall, within 1 year after February 5, 1976, promulgate standards and procedures under which the State share of such cost may be provided through in-kind benefits such as forgiveness of taxes, trackage rights, and facilities which would not otherwise be provided.

(h) State rail service assistance entitlement; computation of amount; reallocation

Each State which is, pursuant to subsection (j) of this section, eligible to receive rail service assistance is entitled to an amount equal to the total amount authorized and appropriated for such purpose, multiplied by a fraction whose numerator is the rail mileage in such State which is eligible for rail service assistance under this section and whose denominator is the rail mileage in all of the States which are eligible for rail service assistance under this section. Notwithstanding the provisions of the preceding sentence, the entitlement of each State shall not be less than 1 percent of the funds appropriated. For purposes of this subsection, rail mileage shall be measured by the Secretary, in consultation with the Interstate Commerce Commission. Any portion of the entitlement of any State which is withheld, in accordance with this section, and any such sums which are not used or committed by a State shall be reallocated immediately, to the extent practicable, among the other States, in accordance with the formula set forth in the first sentence of this subsection.

(i) Allocation by State of rail service assistance; grants to States

Rail service assistance to which a State is entitled under this section may be allocated by such State to meet the cost of establishing and implementing the State rail plan required by subsection (j) of this section or by section 402(c)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 762(c)(1)). Such grants shall be made available by the Secretary during the course of the State rail planning process, and shall be distributed by the Secretary as needed by the States. The amount of State rail planning grants to which each State (including each State referred to in subsection (n)(1) of this section) is entitled shall be proportionate to the amount of rail service assistance to which such State is entitled under this chapter.

(j) Preconditions for eligibility of States for rail service assistance

A State is eligible to receive rail service assistance from the Secretary if—

(1) such State has established an adequate plan for rail services in such State as part of an overall planning process for all transportation services in such State, including a suitable process for updating, revising, and amending such plan;

(2) such State plan is administered or coordinated by a designated State agency and provides for the equitable distribution of resources;

(3) such State agency (A) has authority and administrative jurisdiction to develop, promote, supervise, and support safe, adequate, and efficient rail transportation services, (B) employs or will employ, directly or indirectly, sufficient trained and qualified personnel, (C) maintains or will maintain adequate programs of investigation, research, promotion, and development, with provisions for public participation, and (D) is designated and directed solely, or in cooperation with other State agencies to take all practicable steps to improve transportation safety and to reduce transportation-related energy utilization and pollution;

(4) such State provides satisfactory assurance that it has or will adopt and maintain adequate procedures for financial control, accounting, and performance evaluation in order to assure proper use of Federal funds; and

(5) such State complies with regulations of the Secretary issued under this section and the Secretary determines that such State meets or exceeds the requirements of paragraphs (1) through (4) of this subsection.

(k) Preconditions for eligibility of project for financial assistance from applicable rail service assistance program

A project is eligible in any year for financial assistance from the applicable rail service assistance program only if—

(1)(A) the Commission has found that the public convenience and necessity permit the abandonment of, or the discontinuance of rail service on, the line of railroad which is related to such project, or (B) the line of railroad or related project was eligible for assistance under title IV of the Regional Rail Reorganization Act of 1973 [45 U.S.C. 761 et seq.]; and

(2) such line, or related projects, has not previously been the subject of Federal rail

service assistance under this section for more than 5 fiscal years.

(l) Additional payments to State for project eligible for financial assistance from applicable rail service assistance program

The Secretary shall pay to each eligible State an amount equal to its entitlement under subsection (h) of this section, to be expended or committed to one or more projects which are eligible, pursuant to subsection (k) of this section.

(m) Recordkeeping, auditing, etc., requirements of recipients of financial assistance

(1) Each recipient of financial assistance under subsections (e) through (o) of this section, whether in the form of grants, subgrants, contracts, subcontracts, or other arrangements, shall keep such records as the Secretary shall prescribe including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance was given or used, the amount of that portion of the cost of the project which was supplied by other sources, and such other records as will facilitate an effective audit. Such records shall be maintained for 3 years after the completion of such a project or undertaking.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of receipts which, in the opinion of the Secretary or of the Comptroller General may be related or pertinent to the grants, contracts, or other arrangements referred to in paragraph (1) of this subsection.

(3) The Secretary and the Comptroller General shall regularly conduct, or cause to be conducted—

(A) a financial audit, in accordance with generally accepted auditing standards; and

(B) a performance audit of the activities and transactions assisted under this section, in accordance with generally accepted management principles.

Such audits may be conducted by independent certified or licensed public accountants and management consultants approved by the Secretary and the Comptroller General, and they shall be conducted in accordance with such rules and regulations as may be prescribed by the Comptroller General.

(n) Definition

As used in this section, the term "State" means—

(1) during the period from February 5, 1976, through the second anniversary of the date on which rail properties are conveyed pursuant to section 303(b)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 743(b)(1)), any State in which a carrier by railroad subject to part I of the Interstate Commerce Act [49 U.S.C. 1 et seq.] maintains any line of railroad, except that the term shall not include the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, Indiana, Michigan, and Illinois, and the District of Columbia; and

(2) during the period following the second anniversary of the date on which rail properties are conveyed pursuant to such section 303(b)(1) [45 U.S.C. 743(b)(1)], any State in which a carrier by railroad subject to part I of the Interstate Commerce Act [49 U.S.C. 1 et seq.] maintains any line of railroad.

(o) Authorization of appropriations; availability of unexpended appropriations

There are authorized to be appropriated to the Secretary for the purposes of subsections (f) through (o) of this section not to exceed $360,000,000, without fiscal year limitation. Of the foregoing sums, not to exceed $5,000,000 shall be made available for planning grants during each of the 3 fiscal years ending June 30, 1976; September 30, 1977; and September 30, 1978. In addition, any appropriated sums remaining after the repeal of section 402 of the Regional Rail Reorganization Act of 1973 [45 U.S.C. 762] are authorized to remain available to the Secretary for purposes of subsections (f) through (o) of this section. Such sums as are appropriated are authorized to remain available until expended.

(Pub. L. 89-670, § 5, as added and amended Pub. L. 94-210, title IV, § 401, title VIII, § 803, Feb. 5, 1976, 90 Stat. 61, 130.)

REFERENCES IN TEXT

Section 901 of the Railroad Revitalization and Regulatory Reform Act of 1976, referred to in subsec. (c), is set out as a note below.

The antitrust laws of the United States, referred to in subsec. (d), are classified generally to section 1 et seq. of Title 15, Commerce and Trade.

This chapter referred to in subsec. (i), read in the original "this Act", meaning Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, known as the Department of Transportation Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1651 of this title and Tables volume.

The Regional Rail Reorganization Act of 1973, referred to in subsec. (k)(1), is Pub. L. 93-236, Jan. 2, 1974, 87 Stat. 985, as amended. Title IV of the Regional Rail Reorganization Act of 1973 is classified generally to subchapter IV (§ 761 et seq.) of chapter 16 of Title 45, Railroads. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 45 and Tables volume.

The Interstate Commerce Act, referred to in subsecs. (n), is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended. Part I of the Interstate Commerce Act is classified generally to chapter 1 (§ 1 et seq.) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

PRIOR PROVISIONS

A prior section 1654, Pub. L. 89-670, § 5, Oct. 15, 1966, 80 Stat. 935, which related to the establishment, powers, functions, duties, etc., of the National Transportation Safety Board, was repealed by Pub. L. 93-633, title III, § 308(1), Jan. 3, 1975, 88 Stat. 2173, and the subject matter is now covered by section 1901 et seq. of this title.

AMENDMENTS

1976—Subsecs. (f) to (o). Pub. L. 94-210, § 803, added subsecs. (f) to (o).

EFFECTIVE DATE

Section effective on Oct. 1, 1976, see section 303 of Pub. L. 94-555, set out as an Effective Date of 1976 Amendment note under section 543 of Title 45, Railroads.

STUDY OF RAILWAY SYSTEM

Pub. L. 94-210, § 901, as amended by Pub. L. 94-555, title II, §§ 216(e), 220(h), Oct. 19, 1976, 90 Stat. 2627, 2630, authorized the Secretary of Transportation to make a comprehensive study of the American railway system with a view toward potential cost savings, improvements in the service provided, limited facility rehabilitation, alternate rail corporate structures, and benefits of railroad electrification for high density lines and to survey the railroad industry as to financial condition and physical condition of equipment and facilities, and required submission of his report pursuant to said study within 720 days of Feb. 5, 1976.

Section 902 of Pub. L. 94-210, authorized the Secretary of Transportation to initiate a comprehensive study and analysis of (1) past and present policies and methods of providing Federal aid for construction, improvement, operation, and maintenance of rail transportation facilities and services, (2) relationship of such policies and methods to the policies and methods for other modes of transportation, and (3) whether railroad carriers were disadvantaged by such policies and methods; directed the Secretary to find ways to encourage a competitive market in rail transportation as against other modes of transportation; directed the Commission and the Secretary of the Army to cooperate with the Secretary; authorized the Secretary to require reports by carriers to gather necessary information; and required the Secretary to submit his report pursuant to such study within one year of Feb. 5, 1976.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5 of this title.

§ 1655. Transfer of functions

(a) Powers and duties of the Secretary of Commerce and other offices and officers of the Department of Commerce relating to highways, ground transportation generally, aircraft, pilotage, and traffic and highway safety generally

There are hereby transferred to and vested in the Secretary all functions, powers, and duties of the Secretary of Commerce and other offices and officers of the Department of Commerce under—

(1) the following laws and provisions of law relating generally to highways:

(A) Title 23, United States Code, as amended.

(B) The Federal-Aid Highway Act of 1966 (80 Stat. 766).

(C) The Federal-Aid Highway Act of 1962, as amended (76 Stat. 1145; 23 U.S.C. 307 note).

(D) The Act of July 14, 1960, as amended (74 Stat. 526; 23 U.S.C. 313 note).

(E) The Federal-Aid Highway Act of 1954, as amended (68 Stat. 70).

(F) The Act of September 26, 1961, as amended (75 Stat. 670).

(G) The Highway Revenue Act of 1956, as amended (70 Stat. 387; 23 U.S.C. 120 note).

(H) The Highway Beautification Act of 1965, as amended (79 Stat. 1028; 23 U.S.C. 131 et seq. notes).

(I) The Alaska Omnibus Act, as amended (73 Stat. 141; 48 U.S.C. 21 note prec.).

(J) The Joint Resolution of August 28, 1965, as amended (79 Stat. 578; 23 U.S.C. 101 et seq. notes).

(K) Section 502(c) of the General Bridge Act of 1946, as amended (60 Stat. 847; 33 U.S.C. 525(c)).

(L) The Act of April 27, 1962, as amended (76 Stat. 59).

(M) Reorganization Plan No. 7 of 1949 (63 Stat. 1070).

(2) the following laws and provisions of law relating generally to ground transportation:

(A) The Act of September 30, 1965, as amended (79 Stat. 893; 49 U.S.C. 1631 et seq.).

(B) The Urban Mass Transportation Act of 1964, as amended (78 Stat. 306; 49 U.S.C. 1607).

(3) the following laws and provisions of law relating generally to aircraft:

(A) The Act of September 7, 1957, as amended (71 Stat. 629; 49 U.S.C. 1324 note).

(B) Section 410 of the Federal Aviation Act of 1958, as amended (72 Stat. 769; 49 U.S.C. 1380).

(C) Title XIII of the Federal Aviation Act of 1958, as amended (72 Stat. 800; 49 U.S.C, 1531 et seq.).

(4) the following law relating generally to pilotage: The Great Lakes Pilotage Act of 1960, as amended (74 Stat. 259; 46 U.S.C. 216 et seq.).

(5) the following law to the extent it authorizes scientific and professional positions which relate primarily to functions transferred by this subsection: The Act of August 1, 1947, as amended (61 Stat. 715) [5 U.S.C. 3104].

(6) the following laws relating generally to traffic and highway safety:

(A) The National Traffic and Motor Vehicle Safety Act of 1966 (80 Stat. 718) [15 U.S.C. 1381 et seq.].

(B) The Highway Safety Act of 1966 (80 Stat. 731) [23 U.S.C. 401 et seq.].

(b) Coast Guard; functions of the Secretary of the Treasury and other offices and officers of the Department of the Treasury relating to the Coast Guard

(1) The Coast Guard is hereby transferred to the Department, and there are hereby transferred to and vested in the Secretary all functions, powers, and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other officers and offices of the Department of the Treasury.

(2) Notwithstanding the transfer of the Coast Guard to the Department and the transfer to the Secretary of the functions, powers, and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other officers and offices of the Department of the Treasury, effected by the provisions of paragraph (1) of this subsection, the Coast Guard, together with the functions, powers, and duties relating thereto, shall operate as a part of the Navy, subject to the orders of the Secretary of the Navy, in time of war or when the President shall so direct, as provided in section 3 of title 14.

(3) Notwithstanding any other provision of this chapter, the functions, powers, and duties of the General Counsel of the Department of the Treasury set out in chapter 47 of title 10

(Uniform Code of Military Justice), are hereby transferred to and vested in the General Counsel of the Department.

(c) Federal Aviation Agency; functions, powers, and duties of Administrator and other offices and officers

(1) There are hereby transferred to and vested in the Secretary all functions, powers, and duties of the Federal Aviation Agency, and of the Administrator and other officers and offices thereof, including the development and construction of a civil supersonic aircraft: *Provided, however,* That there are hereby transferred to the Federal Aviation Administrator, and it shall be his duty to exercise the functions, powers, and duties of the Secretary pertaining to aviation safety (other than those relating to the transportation, packaging, marking, or description of hazardous materials) as set forth in sections 306, 307, 308, 309, 312, 313, 314, 1101, 1105, and 1111 [49 U.S.C. 1347, 1348, 1349, 1350, 1353, 1354, 1355, 1501, 1505, and 1511], and titles VI, VII, IX, and XII [49 U.S.C. 1421 et seq., 1441 et seq., 1471 et seq., and 1521 et seq.] of the Federal Aviation Act of 1958, as amended. In exercising these enumerated functions, powers, and duties, the Administrator shall be guided by the declaration of policy in section 103 of the Federal Aviation Act of 1958, as amended [49 U.S.C. 1303]. Decisions of the Federal Aviation Administrator made pursuant to the exercise of the functions, powers, and duties enumerated in this subsection to be exercised by the Administrator shall be administratively final, and appeals as authorized by law or this chapter shall be taken directly to the National Transportation Safety Board or to the courts, as appropriate.

(2) Nothing in this chapter shall affect the power of the President under section 302(e) of the Federal Aviation Act of 1958 (72 Stat. 746, 49 U.S.C. 1343(c)) to transfer, to the Department of Defense in the event of war, any functions transferred by this chapter from the Federal Aviation Agency.

(d) Civil Aeronautics Board; chairman, members, officers, and offices; transfer to National Transportation Safety Board

There are hereby transferred to and vested in the Secretary all functions, powers, and duties of the Civil Aeronautics Board, and of the Chairman, members, officers, and offices thereof under titles VI (72 Stat. 775) [49 U.S.C. 1421 et seq.] and VII (72 Stat. 781) [49 U.S.C. 1441 et seq.] of the Federal Aviation Act of 1958, as amended: *Provided, however,* That these functions, powers, and duties are hereby transferred to and shall be exercised by the National Transportation Safety Board. Decisions of the National Transportation Safety Board made pursuant to the exercise of the functions, powers, and duties enumerated in this subsection shall be administratively final, and appeals as authorized by law or this chapter shall be taken directly to the courts.

(e) Interstate Commerce Commission; functions, powers, and duties relating to safety appliances and equipment on railroad engines and cars, protection of employees and travelers, hours of service, medals for heroism, explosives and other dangerous articles, standard time zones and daylight saving time; safety of operation and equipment

There are hereby transferred to and vested in the Secretary all functions, powers, and duties of the Interstate Commerce Commission, and of the Chairman, members, officers, and offices thereof, under—

(1) the following laws relating generally to safety appliances and equipment on railroad engines and cars, and protection of employees and travelers:

(A) The Act of March 2, 1893, as amended (27 Stat. 531; 45 U.S.C. 1 et seq.).

(B) The Act of March 2, 1903, as amended (32 Stat. 943; 45 U.S.C. 8 et seq.).

(C) The Act of April 14, 1910, as amended (36 Stat. 298; 45 U.S.C. 11 et seq.).

(D) The Act of May 30, 1908, as amended (35 Stat. 476; 45 U.S.C. 17 et seq.).

(E) The Act of February 17, 1911, as amended (36 Stat. 913; 45 U.S.C. 22 et seq.).

(F) The Act of March 4, 1915, as amended (38 Stat. 1192; 45 U.S.C. 30).

(G) Reorganization Plan No. 3 of 1965 (79 Stat. 1320).

(H) Joint Resolution of June 30, 1906, as amended (34 Stat. 838; 45 U.S.C. 35).

(I) The Act of May 27, 1908, as amended (35 Stat. 325; 45 U.S.C. 36 et seq.).

(J) The Act of March 4, 1909, as amended (35 Stat. 965; 45 U.S.C. 37).

(K) The Act of May 6, 1910, as amended (36 Stat. 350; 45 U.S.C. 38 et seq.).

(2) the following law relating generally to hours of service of employees: The Act of March 4, 1907, as amended (34 Stat. 1415; 45 U.S.C. 61 et seq.).

(3) the following law relating generally to medals for heroism: The Act of February 23, 1905, as amended (33 Stat. 743; 49 U.S.C. 1201 et seq.).

(4) the following provisions of law relating generally to explosives and other dangerous articles: Sections 831–835 of title 18.

(5) the following laws relating generally to standard time zones and daylight saving time:

(A) The Act of March 19, 1918, as amended (40 Stat. 450; 15 U.S.C. 261 et seq.).

(B) The Act of March 4, 1921, as amended (41 Stat. 1446; 15 U.S.C. 265).

(C) The Uniform Time Act of 1966, as amended (80 Stat. 107).

(6) the following provisions of the Interstate Commerce Act, as amended—

(A) relating generally to safety appliance methods and systems: Section 25 (49 U.S.C. 26).

(B) relating generally to investigation of motor vehicle sizes, weights, and service of employees: Section 226 (49 U.S.C. 325).

(C) relating generally to qualifications and maximum hours of service of employees and safety of operation and equipment: Sections 204(a)(1) and (2), to the extent that they relate to qualifications and maxi-

mum hours of service of employees and safety of operation and equipment; and sections 204(a)(3), (3a), and (5) (49 U.S.C. 304).

(D) to the extent they relate to private carriers of property by motor vehicle and carriers of migrant workers by motor vehicle other than contract carriers: Sections 221(a), 221(c), and 224 (49 U.S.C. 321 et seq.) [49 U.S.C. 321(a), (c), 324].

(f) Retention by Interstate Commerce Commission of powers and functions not expressly transferred; railroad and motor carrier safety under Federal Railroad and Federal Highway Administrators; review of administrative decisions

(1) Nothing in subsection (e) shall diminish the functions, powers, and duties of the Interstate Commerce Commission under sections 1(6), 206, 207, 209, 210a, 212, and 216 of the Interstate Commerce Act, as amended (49 U.S.C. 1(6), 306 et seq.) [49 U.S.C. 1(6), 306, 307, 309, 310a, 312, 316], or under any other section of that Act not specifically referred to in subsection (e).

(2)(A) With respect to any function which is transferred to the Secretary by subsection (e) and which was vested in the Interstate Commerce Commission preceding such transfer, the Secretary shall have the same administrative powers under the Interstate Commerce Act as the Commission had before such transfer with respect to such transferred function. After such transfer, the Commission may exercise its administrative powers under the Interstate Commerce Act only with respect to those of its functions not transferred by subsection (e).

(B) For purposes of this paragraph—

(i) the term "function" includes power and duty, and

(ii) the term "administrative powers under the Interstate Commerce Act" means any functions under the following provisions of the Interstate Commerce Act, as amended: Sections 12, 13(1), 13(2), 14, 16(12), the last sentence of 18(1), sections 20 (except clauses (3), (4), (11), and (12) thereof), 204(a)(6) and (7), 204(c), 204(d), 205(d), 205(f), 220 (except subsection (c) and the proviso of subsection (a) thereof), 222 (except subsections (b)(2) and (b)(3) thereof), and 417(b)(1) (49 U.S.C. 12 et seq. 304 et seq., and 1017) [49 U.S.C. 12, 13(1), (2), 14, 16(12), 18(1), 20, 304(a)(6), (7), (c), (d), 305(d), (f), 320, 322, 1017(b)(1)].

(3)(A) The Federal Railroad Administrator shall carry out the functions, powers, and duties of the Secretary pertaining to railroad safety as set forth in the statutes transferred to the Secretary by subsection (e) of this section (other than subsection (e)(4) of this section).

(B) The Federal Highway Administrator shall carry out the functions, powers, and duties of the Secretary pertaining to motor carrier safety as set forth in the statutes transferred to the Secretary by subsection (e) of this section (other than subsection (e)(4) of this section).

(C) Decisions of the Federal Railroad Administrator and the Federal Highway Administrator (i) which are made pursuant to the exercise of the functions, powers, and duties enumerated in subparagraphs (A) and (B) of this paragraph to be carried out by the Administrators, and (ii) which involve notice and hearing required by law, shall be administratively final, and appeals as authorized by law or this chapter shall be taken directly, to the National Transportation Safety Board or the courts, as appropriate.

(g) Department of the Army; functions, powers, and duties of the Secretary of the Army relating to water vessel anchorages, drawbridge operating regulations, obstructive bridges, tolls, prevention of pollution of the sea by oil, and location and clearance of bridges and causeways on navigable waters

There are hereby transferred to and vested in the Secretary all functions, powers, and duties of the Secretary of the Army and other officers and offices of the Department of the Army under—

(1) the following law and provisions of law relating generally to water vessel anchorages:

(A) Section 7 of the Act of March 4, 1915, as amended (38 Stat. 1053; 33 U.S.C. 471).

(B) Article 11 of section 1 of the Act of June 7, 1897, as amended (30 Stat. 98; 33 U.S.C. 180).

(C) Rule 9 of section 1 of the Act of February 8, 1895, as amended (28 Stat. 647; 33 U.S.C. 258).

(D) Rule numbered 13 of section 4233 of the Revised Statutes, as amended (33 U.S.C. 322).

(2) the following provision of law relating generally to drawbridge operating regulations: Section 5 of the Act of August 18, 1894, as amended (28 Stat. 362; 33 U.S.C. 499).

(3) the following law relating generally to obstructive bridges: The Act of June 21, 1940, as amended (54 Stat. 497; 33 U.S.C. 511 et seq.).

(4) the following laws and provisions of law relating generally to the reasonableness of tolls:

(A) Section 4 of the Act of March 23, 1906, as amended (34 Stat. 85; 33 U.S.C. 494).

(B) Section 503 of the General Bridge Act of 1946, as amended (60 Stat. 847; 33 U.S.C. 526).

(C) Section 17 of the Act of June 10, 1930, as amended (46 Stat. 552; 33 U.S.C. 498a).

(D) The Act of June 27, 1930, as amended (46 Stat. 821; 33 U.S.C. 498b).

(E) The Act of August 21, 1935, as amended (49 Stat. 670; 33 U.S.C. 503 et seq.).

(5) the following law relating to prevention of pollution of the sea by oil: The Oil Pollution Act, 1961, as amended (75 Stat. 402; 33 U.S.C. 1001 et seq.).

(6) the following laws and provision of law to the extent that they relate generally to the location and clearances of bridges and causeways in the navigable waters of the United States:

(A) Section 9 of the Act of March 3, 1899, as amended (30 Stat. 1151; 33 U.S.C. 401).

(B) The Act of March 23, 1906, as amended (34 Stat. 84; 33 U.S.C. 491 et seq.).

(C) The General Bridge Act of 1946, as amended (60 Stat. 847; 33 U.S.C. 525 et seq.).

(h) Applicability of administrative procedure and judicial review provisions of title 5

The provisions of subchapter II of chapter 5 and of chapter 7 of title 5 shall be applicable to proceedings by the Department and any of the administrations or boards within the Department established by this chapter except that notwithstanding this or any other provision of this chapter, the transfer of functions, powers, and duties to the Secretary or any other officer in the Department shall not include functions vested by subchapter II of chapter 5 of title 5 in hearing examiners employed by any department, agency, or component thereof whose functions are transferred under the provisions of this chapter.

(i) Alaska Railroad

The administration of the Alaska Railroad, established pursuant to the Act of March 12, 1914, as amended (38 Stat. 308), and all of the functions authorized to be carried out by the Secretary of the Interior pursuant to Executive Order Numbered 11107, April 25, 1963 (28 F.R. 4225), relative to the operation of said Railroad, are hereby transferred to and vested in the Secretary of Transportation who shall exercise the same authority with respect thereto as is now exercised by the Secretary of the Interior pursuant to said Executive order.

(Pub. L. 89–670, § 6, Oct. 15, 1966, 80 Stat. 937; Pub. L. 92–401, § 6, Aug. 22, 1972, 86 Stat. 617; Pub. L. 93–633, title I, § 113(d), (e), Jan. 3, 1975, 88 Stat. 2163.)

REFERENCES IN TEXT

Title 23, United States Code, referred to in subsec. (a)(1)(A), means Title 23, Highways.

The Federal-Aid Highway Act of 1966 (80 Stat. 766), referred to in subsec. (a)(1)(B), is Pub. L. 89–574, Sept. 13, 1966, 80 Stat. 766, which enacted sections 137 and 138 of Title 23, Highways, amended sections 101, 104, 109, 118, 120, 125, 131, 136, 302, and 319 of title 23, and enacted provisions set out as notes under sections 101, 106, 108, and 125 of Title 23. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Title 23 and Tables volume.

The Federal-Aid Highway Act of 1962, as amended, (76 Stat. 1145; 23 U.S.C. 307 note), referred to in subsec. (a)(1)(C), is Pub. L. 87–866, Oct. 23, 1962, 76 Stat. 1145, which enacted sections 133, 134, and 214 of Title 23, Highways, and amended sections 103, 104, 203, and 307 of Title 23. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Title 23 and Tables volume.

The Act of July 14, 1960, as amended, (74 Stat. 526; 23 U.S.C. 313 note), referred to in subsec. (a)(1)(D), means Pub. L. 86–660, July 14, 1960, 74 Stat. 526, as amended, which is set out as a note under section 313 of Title 23, Highways.

The Federal-Aid Highway Act of 1954, as amended (68 Stat. 70), referred to in subsec. (a)(1)(E), is act May 6, 1954, ch. 181, 68 Stat. 70, which, insofar as classified to the Code, enacted sections 6–1, 6a–2, 13–1, 21–1, 21a–1, 21a–2, and 23b–1, of former Title 23, Highways, amended section 1020 of Title 18, Crimes and Criminal Procedure, and section 2 of former Title 23, and enacted provisions set out as notes under sections 8–1 and 460c of Title 16, Conservation. Sections 2, 6a–2, 13–1, and 21–1 of former Title 23 were repealed by Pub. L. 85–767, Aug. 27, 1958, § 2, 72 Stat. 919, and reenacted as sections 101 (pt.), 310, 112(b), (c), and 307(a), (b) of Title 23, Highways. For complete classification of this Act to the Code, see Tables volume.

The Act of September 26, 1961, as amended (75 Stat. 670), referred to in subsec. (a)(1)(F), is Pub. L. 87–307, Sept. 26, 1961, 75 Stat. 670, as amended, and was not classified to the Code.

The Highway Revenue Act of 1956, as amended (70 Stat. 387; 23 U.S.C. 120 note), referred to in subsec. (a)(1)(G), is act June 29, 1956, ch. 462, title II, 70 Stat. 387, as amended, which enacted sections 173 [now set out as a note under section 120 of Title 23, Highways] and 174 of former Title 23, Highways, and sections 4226, 4481 to 4484, and 6421 of Title 26, Internal Revenue Code, amended sections 4041, 4061, 4071, 4072, 4073, 4081, 4084, 6206, 6302, 6412, 6416, 6504, 6511, 6612, 6675, 7210, 7603, 7604, and 7605 of Title 26, renumbered sections 4227 and 6422 of Title 26, and enacted provisions set out as notes under section 4041 of Title 26. For complete classification of this Act to the Code, see Short Title of 1956 Amendments note set out under section 4041 of Title 26 and Tables volume.

The Highway Beautification Act of 1965, as amended (79 Stat. 1028; 23 U.S.C. 131 et seq. notes), referred to in subsec. (a)(1)(H), is Pub. L. 89–285, Oct. 22, 1965, 79 Stat. 1028, as amended, which enacted section 136 of Title 23, Highways, and enacted provisions set out as notes under sections 131 and 135 of Title 23 and amended sections 131 and 319 of Title 23. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 23 and Tables volume.

The Alaska Omnibus Act, as amended (73 Stat. 141; 48 U.S.C. 21 note prec.), referred to in subsec. (a)(1)(I), is Pub. L. 86–70, June 25, 1959, 73 Stat. 141, which is set out as a note preceding section 21 of Title 48, Territories and Insular Possessions.

The Joint Resolution of August 28, 1965, as amended (79 Stat. 578; 23 U.S.C. 101 et seq. notes), referred to in subsec. (a)(1)(J), is Pub. L. 89–139, Aug. 28, 1965, 79 Stat. 578, as amended, which enacted section 135 of Title 23, Highways, enacted provisions set out as notes under sections 101 and 104 of Title 23, and amended provision set out as a note under section 101 of Title 23. For complete classification of this Act to the Code, see Tables volume.

The Act of April 27, 1962, as amended (76 Stat. 59), referred to in subsec. (a)(1)(L), is Pub. L. 87–441, Apr. 27, 1962, 76 Stat. 59, as amended, and was not classified to the Code.

Reorganization Plan No. 7 of 1949 (63 Stat. 1070), referred to in subsec. (a)(1)(M), is Reorg. Plan No. 7 of 1949, eff. Aug. 20, 1949, 14 F.R. 5228, 63 Stat. 1070, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Act of September 30, 1965, as amended (79 Stat. 893; 49 U.S.C. 1631 et seq.), referred to in subsec. (a)(2)(A), is Pub. L. 89–220, Sept. 30, 1965, 79 Stat. 893, as amended, which is classified generally to chapter 22 (§ 1631 et seq.) of this title. For complete classification of this Act to the Code, see Tables volume.

The Urban Mass Transportation Act of 1964, as amended (78 Stat. 306; 49 U.S.C. 1607), referred to in subsec. (a)(2)(B), is Pub. L. 88–365, July 9, 1964, 78 Stat. 302, as amended, which is classified generally to chapter 21 (§ 1601 et seq.) of this title. Section 1607 of this title was omitted from the Code as superseded. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables volume.

The Act of September 7, 1957, as amended (71 Stat. 629; 49 U.S.C. 1324 note), referred to in subsec. (a)(3)(A), is Pub. L. 85–307, Sept. 7, 1957, 71 Stat. 629, as amended, which is set out as a note under section 1324 of this title.

The Federal Aviation Act of 1958, as amended, referred to in subsecs. (a)(3)(C), (c)(1), (d), is Pub. L. 85–726, Aug. 23, 1958, 72 Stat. 731, as amended. Titles VI, VII, IX, XII, and XIII of the Federal Aviation Act of 1958 are classified generally to subchapters VI (§ 1421 et seq.), VII (§ 1441 et seq.), IX (§ 1471 et seq.), XII (§ 1521 et seq.), and XIII (§ 1531 et seq.) of chapter 20 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

The Great Lakes Pilotage Act of 1960, as amended (74 Stat. 259; 46 U.S.C. 216 et seq.) referred to in

subsec. (a)(4), is Pub. L. 86-555, June 30, 1960, 74 Stat. 259, as amended, which is classified generally to chapter 10A (§ 216 et seq.) of Title 46, Shipping. For complete classification of this Act to the Code, see Short Title note under section 216 of Title 46 and Tables volume.

The Act of August 1, 1947, as amended (61 Stat. 715), referred to in subsec. (a)(5), was amended generally by section 2 of Pub. L. 87-378, Oct. 4, 1961, 75 Stat. 789, and subsequently repealed by section 8 of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 632, section 1 of which enacted Title 5, Government Organization and Employees. Provisions that authorized scientific and professional positions were reenacted in section 3104 of Title 5.

The National Traffic and Motor Vehicle Safety Act of 1966 (80 Stat. 718), referred to in subsec. (a)(6)(A), is Pub. L. 89-563, Sept. 9, 1966, 80 Stat. 718, which is classified generally to chapter 38 (§ 1381 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1381 of Title 15 and Tables volume.

The Highway Safety Act of 1966 (80 Stat. 731), referred to in subsec. (a)(6)(B), is Pub. L. 89-564, Sept. 9, 1966, 80 Stat. 731, which is classified principally to chapter 4 (§ 401 et seq.) of Title 23, Highways. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 23 and Tables volume.

This chapter referred to in subsecs. (c), (d), and (h), read in the original "this Act", meaning Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, known as the Department of Transportation Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1651 of this title and Tables volume.

The Act of March 2, 1893, as amended (27 Stat. 531; 45 U.S.C. 1 et seq.), referred to in subsec. (e)(1)(A), is act Mar. 2, 1893, ch. 196, 27 Stat. 531, as amended, popularly known as the Safety Appliance Act of March 2, 1893, which enacted sections 1 to 7 of Title 45, Railroads. For complete classification of this Act to the Code, see Tables volume.

The Act of March 2, 1903, as amended (32 Stat. 943; 45 U.S.C. 8 et seq.), referred to in subsec. (e)(1)(B), is act Mar. 2, 1903, ch. 976, 32 Stat. 943, as amended, popularly known as the Safety Appliance Act of March 2, 1903, which enacted sections 8 to 10 of Title 45, Railroads. For complete classification of this Act to the Code, see Tables volume.

The Act of April 14, 1910, as amended (36 Stat. 298; 45 U.S.C. 11 et seq.), referred to in subsec. (e)(1)(C), is act Apr. 14, 1910, ch. 160, 36 Stat. 298, as amended, popularly known as the Safety Appliance Act of April 14, 1910, which enacted sections 11 to 16 of Title 45, Railroads. For complete classification of this Act to the Code, see Tables volume.

The Act of May 30, 1908, as amended (35 Stat. 476; 45 U.S.C. 17 et seq.), referred to in subsec. (e)(1)(D), is act May 30, 1908, ch. 225, 35 Stat. 476, as amended, which enacted sections 17 to 21 of Title 45, Railroads. For complete classification of this Act to the Code, see Tables volume.

The Act of February 17, 1911, as amended (36 Stat. 913; 45 U.S.C. 22 et seq.), referred to in subsec. (e)(1)(E), is act Feb. 17, 1911, ch. 103, 36 Stat. 913, as amended, which enacted sections 22 to 29 and 31 to 34 of Title 45, Railroads. For complete classification of this Act to the Code, see Tables volume.

The Act of March 4, 1915, as amended (38 Stat. 1192; 45 U.S.C. 30), referred to in subsec. (e)(1)(F), is act Mar. 4, 1915, ch. 169, 38 Stat. 1192, as amended, which enacted section 30 and amended section 23 of Title 45, Railroads.

Reorganization Plan No. 3 of 1965 (79 Stat. 1320), referred to in subsec. (e)(1)(G), is Reorg. Plan No. 3 of 1965, eff. July 27, 1965, 30 F.R. 9351, 79 Stat. 4446, which is set out as a note in the Appendix to Title 5, Government Organization and Employees.

Joint Resolution of June 30, 1906, as amended (34 Stat. 838; 45 U.S.C. 35), referred to in subsec. (e)(1)(H), is Joint Res. June 30, 1906, No. 46, 34 Stat. 838, as amended, which enacted section 35 of Title 45, Railroads.

The Act of May 27, 1908, as amended (35 Stat. 325; 45 U.S.C. 36 et seq.), referred to in subsec. (e)(1)(I), is act May 27, 1908, ch. 200, 35 Stat. 317, as amended. Provisions of the act relating to safety appliances enacted sections 36 and 37 of Title 45, Railroads.

The Act of March 4, 1909, as amended (35 Stat. 965; 45 U.S.C. 37), referred to in subsec. (e)(1)(J), is act Mar. 4, 1909, ch. 299, 35 Stat. 959, as amended. Provisions of the act relating to safety appliances enacted section 37 of Title 45, Railroads.

The Act of May 6, 1910, as amended (36 Stat. 350; 45 U.S.C. 38 et seq.), referred to in subsec. (e)(1)(K), is act May 6, 1910, ch. 208, 36 Stat. 350, as amended, which enacted sections 38 to 43 of Title 45, Railroads. For complete classification of this Act to the Code, see Tables volume.

The Act of March 4, 1907, as amended (34 Stat. 1415; 45 U.S.C. 61 et seq.), referred to in subsec. (e)(2), is act Mar. 4, 1907, ch. 2939, 34 Stat. 1415, as amended, popularly known as the Hours of Service Act, which is classified generally to chapter 3 (§ 61 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see Short Title note set out under section 61 of Title 45 and Tables volume.

The Act of February 23, 1905, as amended (33 Stat. 743; 49 U.S.C. 1201 et seq.), referred to in subsec. (e)(3), is act Feb. 23, 1905, ch. 744, 33 Stat. 743, as amended, popularly known as the Medals of Honor Act, which is classified generally to chapter 17 (§ 1201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of this title and Tables volume.

The Act of March 19, 1918, as amended (40 Stat. 450; 15 U.S.C. 261 et seq.), referred to in subsec. (e)(5)(A), is act Mar. 19, 1918, ch. 24, 40 Stat. 450, as amended, which enacted sections 261 to 264 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Tables volume.

The Act of March 4, 1921, as amended (41 Stat. 1446; 15 U.S.C. 265), referred to in subsec. (e)(5)(B), is act Mar. 4, 1921, ch. 173, 41 Stat. 1446, as amended, which enacted section 265 of Title 15, Commerce and Trade.

The Uniform Time Act of 1966, as amended (80 Stat. 107), referred to in subsec. (e)(5)(C), is Pub. L. 89-387, Apr. 13, 1966, 80 Stat. 107, as amended, which enacted sections 260, 260a, 266, and 267, amended sections 261 to 263, and enacted provisions set out as notes under section 260 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note under section 201 of Title 15 and Tables volume.

The Interstate Commerce Act, as amended, referred to in subsecs. (e)(6), (f)(1), (2)(A), (B)(ii), is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, which is classified generally to chapters 1, 8, 12, 13, and 19 (§§ 1 et seq., 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

The Act of June 21, 1940, as amended (54 Stat. 497; 33 U.S.C. 511 et seq.), referred to in subsec. (g)(3), is act June 21, 1940, ch. 409, 54 Stat. 497, as amended, which classified generally to subchapter II (§ 511 et seq.) of chapter 11 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Tables volume.

The Act of June 27, 1930, as amended (46 Stat. 821; 33 U.S.C. 498b), referred to in subsec. (g)(4)(D), is act June 27, 1930, ch. 640, 46 Stat. 821, as amended, which enacted section 498b of Title 33, Navigation and Navigable Waters.

The Act of August 21, 1935, as amended (49 Stat. 670; 33 U.S.C. 503 et seq.), referred to in subsec. (g)(4)(E), is act Aug. 21, 1935, ch. 597, 49 Stat. 670, as amended, which enacted sections 503 to 507 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Tables volume.

The Oil Pollution Act, 1961, as amended (75 Stat. 402; 33 U.S.C. 1001 et seq.), referred to in subsec. (g)(5), is Pub. L. 87-167, Aug. 30, 1961, 75 Stat. 402, as amended, which is classified generally to chapter 20 (§ 1001 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 33 and Tables volume.

The Act of March 23, 1906, as amended (34 Stat. 84; 33 U.S.C. 491 et seq.), referred to in subsec. (g)(6)(B), is act Mar. 23, 1906, ch. 1130, 34 Stat. 84, as amended, popularly known as the Bridge Act of 1906, which enacted sections 491 to 498 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 491 of Title 33 and Tables volume.

The General Bridge Act of 1946, as amended (60 Stat. 847; 33 U.S.C. 525 et seq.), referred to in subsec. (g)(6)(C), is act Aug. 2, 1946, ch. 753, title V, 60 Stat. 847, as amended, which is classified generally to subchapter II (§ 525 et seq.) of chapter 11 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 525 of Title 33 and Tables volume.

The Act of March 12, 1914, as amended (38 Stat. 308), referred to in subsec. (i), is act Mar. 12, 1914, ch. 37, 38 Stat. 305, as amended, popularly known as the Alaska Railroad Act, which enacted section 353a of Title 16, Conservation, and sections 975 to 975g of Title 43, Public Lands. For complete classification of this Act to the Code, see Tables volume.

Executive Order Numbered 11107, April 25, 1963 (28 F.R. 4225), referred to in subsec. (i), is set out as a note preceding section 21 of Title 48, Territories and Insular Possessions.

AMENDMENTS

1975—Subsec. (c)(1). Pub. L. 93-633, § 113(d), inserted in first sentence after "aviation safety" the text reading "(other than those relating to the transportation, packaging, marking, or description of hazardous materials)" and preceding "as set forth".

Subsec. (f)(3)(A), (B). Pub. L. 93-633, § 113(e), inserted end text "(other than subsection (e)(4) of this section)".

1972—Subsec. (f)(3)(A). Pub. L. 92-401 substituted "railroad safety" for "railroad and pipeline safety".

EFFECTIVE DATE OF 1975 AMENDMENT; CONTINUANCE OF PRIOR PROVISIONS; TWO YEAR LIMITATION AFTER JAN. 3, 1975, FOR ARRANGEMENTS, INCLUDING LICENSES, ETC., TO COMPLY WITH PUB. L. 93-633; PENDING PROCEEDINGS UNAFFECTED

Amendment by Pub. L. 93-633 effective Jan. 3, 1975, except as otherwise provided, see section 114 of Pub. L. 93-633, set out as an Effective Date note under section 1801 of this title.

AMENDMENT OF EXECUTIVE ORDER RELATING TO FUNCTIONS

Amendment of Executive Orders relating to functions transferred to Transportation Department, see Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247, set out under section 1652 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1653, 1657, 1903 of this title.

§ 1656. Transportation investment standards; promulgation by Secretary of Transportation; use of standards and criteria in surveys, plans, and reports of Federal agencies

(a) The Secretary, subject to the provisions of section 1653 of this title, shall develop and from time to time in the light of experience revise standards and criteria consistent with national transportation policies, for the formulation and economic evaluation of all proposals for the investment of Federal funds in transportation facilities or equipment, except such proposals as are concerned with (1) the acquisition of transportation facilities or equipment by Federal agencies in providing transportation services for their own use; (2) an inter-oceanic canal located outside the contiguous United States; (3) defense features included at the direction of the Department of Defense in the design and construction of civil air, sea, and land transportation; (4) programs of foreign assistance; (5) water resource projects; or (6) grant-in-aid programs authorized by law. The standards and criteria developed or revised pursuant to this subsection shall be promulgated by the Secretary upon their approval by the Congress.

The standards and criteria for economic evaluation of water resource projects shall be developed by the Water Resources Council established by Public Law 89-80. For the purpose of such standards and criteria, the primary direct navigation benefits of a water resource project are defined as the product of the savings to shippers using the waterway and the estimated traffic that would use the waterway; where the savings to shippers shall be construed to mean the difference between (a) the freight rates or charges prevailing at the time of the study for the movement by the alternative means and (b) those which would be charged on the proposed waterway; and where the estimate of traffic that would use the waterway will be based on such freight rates, taking into account projections of the economic growth of the area.

The Water Resources Council established under section 101 of Public Law 89-80 [42 U.S.C. 1962a] is hereby expanded to include the Secretary of Transportation on matters pertaining to navigation features of water resource projects.

(b) Every survey, plan, or report formulated by a Federal agency which includes a proposal as to which the Secretary has promulgated standards and criteria pursuant to subsection (a) of this section shall be (1) prepared in accord with such standards and criteria and upon the basis of information furnished by the Secretary with respect to projected growth of transportation needs and traffic in the affected area, the relative efficiency of various modes of transport, the available transportation services in the area, and the general effect of the proposed investment on existing modes, and on the regional and national economy; (2) coordinated by the proposing agency with the Secretary and, as appropriate, with other Federal agencies, States, and local units of government for inclusion of his and their views and comments; and (3) transmitted thereafter by the proposing agency to the President for disposition in accord with law and procedures established by him.

(Pub. L. 89-670, § 7, Oct. 15, 1966, 80 Stat. 941.)

REFERENCES IN TEXT

Public Law 89-80, referred to in subsec. (a) is Pub. L. 89-80, July 22, 1965, 79 Stat. 244, known as the Water Resources Planning Act, which is classified generally to chapter 19B (§ 1962 et seq.) of Title 42, The Public Health and Welfare. Section 101 of the Act which established the Water Resources Council is classified to section 1962a of Title 42. For complete classification of

this Act to the Code, see Short Title note set out under section 1962 of Title 42 and Tables volume.

§ 1657. Administrative provisions

(a) Authority of Secretary to employ personnel and prescribe their authority and duties

In addition to the authority contained in any other Act which is transferred to and vested in the Secretary, the National Transportation Safety Board, or any other officer in the Department, the Secretary is authorized, subject to the civil service and classification laws, to select, appoint, employ, and fix the compensation of such officers and employees, including investigators, attorneys, and hearing examiners, as are necessary to carry out the provisions of this chapter and to prescribe their authority and duties.

(b) Temporary or intermittent employment of experts and consultants

The Secretary may obtain services as authorized by section 3109 of title 5, but at rates not to exceed $100 per diem for individuals unless otherwise specified in an appropriation Act.

(c) Detailing of participating military personnel for service in Department of Transportation

The Secretary is authorized to provide for participation of military personnel in carrying out the functions of the Department. Members of the Army, the Navy, the Air Force, or the Marine Corps may be detailed for service in the Department by the appropriate Secretary, pursuant to cooperative agreements with the Secretary of Transportation.

(d) Military personnel assigned to Department of Transportation; annual report to Congress on assignment of personnel

(1) Appointment, detail, or assignment to, acceptance of, and service in any appointive or other position in the Department under the authority of subsections (c) and (p) of this section shall in no way affect status, office, rank, or grade which officers or enlisted men may occupy or hold or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade, nor shall any member so appointed, detailed, or assigned be charged against any statutory limitation on grades or strengths applicable to the Armed Forces. A person so appointed, detailed, or assigned shall not be subject to direction by or control by his armed force or any officer thereof directly or indirectly with respect to the responsibilities exercised in the position to which appointed, detailed, or assigned.

(2) The Secretary shall report annually in writing to the appropriate committees of the Congress on personnel appointed and agreements entered into under subsection (c) of this section, including the number, rank, and positions of members of the armed services detailed pursuant thereto.

(e) Delegation and redelegation of powers and functions

(1) Except where this chapter vests in any administration, agency or board, specific functions, powers, and duties, the Secretary may, in addition to the authority to delegate and redelegate contained in any other Act in the exercise of the functions transferred to or vested in the Secretary in this chapter, delegate any of his residual functions, powers, and duties to such officers and employees of the Department as he may designate, may authorize such successive redelegations of such functions, powers, and duties as he may deem desirable, and may make such rules and regulations as may be necessary to carry out his functions, powers, and duties.

(2) In addition to the authority to delegate and redelegate contained in any other Act, in the exercise of the functions transferred to or specified by this chapter to be carried out by any officer in the Department, such officer may delegate any of such functions, powers, and duties to such other officers and employees of the Department as he may designate; may authorize such successive redelegations of such functions, powers, and duties as he may deem desirable; and may make such rules and regulations as may be necessary to carry out such functions, powers, and duties.

(3) The Administrators established by section 1652(e) of this title may not delegate any of the statutory duties and responsibilities specifically assigned to them by this chapter outside of their respective administrations.

(f) Transfer of personnel, assets, liabilities, contracts, property, records, and unexpended funds of the Federal Aviation Agency to the Secretary of Transportation

The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, of the Federal Aviation Agency, and of the head and other officers and offices thereof, are hereby transferred to the Secretary: *Provided, however,* That the personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available, or to be made available in carrying out the duties and functions transferred by this chapter to the Secretary which are specified by this chapter to be carried out by the Federal Aviation Administrator shall be assigned by the Secretary to the Federal Aviation Administrator for these purposes.

(g) Determination of personnel and property transfers to Secretary of Transportation; transfer of property and funds of Civil Aeronautics Boards to National Transportation Safety Board

So much of the positions, personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available in connection with the functions, powers, and duties transferred by section 1655 of this title (except subsection (c)) thereof and section 8(d) and (e) of this Act as the Director of the Office of Management and Budget shall determine shall be transferred to the Secretary: *Provided, however,* That the positions, personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available, or to be made available, by the Civil Aero-

nautics Board in carrying out the duties transferred by this chapter to be exercised by the National Transportation Safety Board shall be transferred to the National Transportation Safety Board. Except as provided in subsection (h) of this section, personnel engaged in functions, powers, and duties transferred under this chapter shall be transferred in accordance with applicable laws and regulations relating to transfer of functions.

(h) Prohibition against reduction in classification or compensation of transferees for one year

The transfer of personnel pursuant to subsections (f) and (g) of this section shall be without reduction in classification or compensation for one year after such transfer.

(i) Lapse of transferred offices and agencies; compensation of executive positions upon continuity of service

In any case where all of the functions, powers, and duties of any office or agency, other than the Coast Guard, are transferred pursuant to this chapter, such office or agency shall lapse. Any person who, on April 1, 1967, held a position compensated in accordance with the Executive Schedule, and who, without a break in service, is appointed in the Department to a position having duties comparable to those performed immediately preceding his appointment shall continue to be compensated in his new position at not less than the rate provided for his previous position, for the duration of his service in his new position.

(j) Administrative services; establishment of capital fund; transactions involving the capital fund

The Secretary is authorized to establish a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as he shall find to be desirable in the interest of economy and efficiency in the Department, including such services as a central supply service for stationery and other supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department and its agencies; central messenger, mail, telephone, and other communications services; office space, central services for document reproduction, and for graphics and visual aids; and a central library service. The capital of the fund shall consist of any appropriations made for the purpose of providing capital (which appropriations are hereby authorized) and the fair and reasonable value of such stocks of supplies, equipment, and other assets and inventories on order as the Secretary may transfer to the fund, less the related liabilities and unpaid obligations. Such funds shall be reimbursed in advance from available funds of agencies and offices in the Department, or from other sources, for supplies and services at rates which will approximate the expense of operation, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from sale or exchange of property and receipts in payment for loss or damage to property owned by the fund. There shall be covered into the United States Treasury as miscellaneous receipts any surplus found in the fund (all assets, liabilities, and prior losses considered) above the amounts transferred or appropriated to establish and maintain said fund.

(k) Seal of office

The Secretary shall cause a seal of office to be made for the Department of such device as he shall approve, and judicial notice shall be taken of such seal.

(l) Authority to provide necessary facilities and services for personnel stationed in remote localities

In addition to the authority contained in any other Act which is transferred to and vested in the Secretary, the National Transportation Safety Board, or other officer in the Department, as necessary, and when not otherwise available, the Secretary is authorized to provide for, construct, or maintain the following for employees and their dependents stationed at remote localities:

(1) Emergency medical services and supplies;

(2) Food and other subsistence supplies;

(3) Messing facilities;

(4) Motion picture equipment and film for recreation and training;

(5) Reimbursement for food, clothing, medicine, and other supplies furnished by such employees in emergencies for the temporary relief of distressed persons; and

(6) Living and working quarters and facilities.

The furnishing of medical treatment under paragraph (1) and the furnishing of services and supplies under paragraphs (2) and (3) of this subsection shall be at prices reflecting reasonable value as determined by the Secretary, and the proceeds therefrom shall be credited to the appropriation from which the expenditure was made.

(m) Authority to accept and hold gifts and bequests for purpose of aiding or facilitating the work of the Department

(1) The Secretary is authorized to accept, hold, administer, and utilize gifts and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Department. Gifts and bequests of money and the proceeds from sales of other property received as gifts or bequests shall be deposited in the Treasury in a separate fund and shall be disbursed upon order of the Secretary. Property accepted pursuant to this paragraph, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift or bequest.

(2) For the purpose of Federal income, estate, and gift taxes, property accepted under paragraph (1) shall be considered as a gift or bequest to or for use of the United States.

(3) Upon the request of the Secretary, the Secretary of the Treasury may invest and reinvest in securities of the United States or in securities guaranteed as to principal and interest by the United States any moneys contained in the fund provided for in paragraph (1). Income accruing from such securities, and from any other property held by the Secretary pursuant to paragraph (1) shall be deposited to the credit of the fund, and shall be disbursed upon order of the Secretary.

(n) Authority to fill requests for statistical compilations covering Department matters on reimbursable basis

(1) The Secretary is authorized, upon the written request of any person, or any State, territory, possession, or political subdivision thereof, to make special statistical studies relating to foreign and domestic transportation, and special studies relating to other matters falling within the province of the Department, to prepare from its records special statistical compilations, and to furnish transcripts of its studies, tables, and other records upon the payment of the actual cost of such work by the person or body requesting it.

(2) All moneys received by the Department in payment of the cost of work under paragraph (1) shall be deposited in a separate account to be administered under the direction of the Secretary. These moneys may be used, in the discretion of the Secretary, for the ordinary expenses incidental to the work and/or to secure in connection therewith the special services of persons who are neither officers nor employees of the United States.

(o) Advisory committees; appointment, compensation

The Secretary is authorized to appoint, without regard to the civil service laws, such advisory committees as shall be appropriate for the purpose of consultation with and advice to the Department in performance of its functions. Members of such committees, other than those regularly employed by the Federal Government, while attending meetings of such committees or otherwise serving at the request of the Secretary, may be paid compensation at rates not exceeding those authorized for individuals under subsection (b) of this section, and while so serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government service employed intermittently.

(p) Appointment of Coast Guard personnel on active duty to serve with Department; retired Coast Guard personnel

(1) Notwithstanding any provision of this chapter or other law, a member of the Coast Guard on active duty may be appointed, detailed, or assigned to any position in the Department other than Secretary, Deputy Secretary, and Assistant Secretary for Administration.

(2) Subject to the provisions of title 5 a retired member of the Coast Guard may be appointed to any position in the Department.

(q) Contracts with private agencies for research; capabilities of research agency; dissemination of resulting data

(1) The Secretary is authorized to enter into contracts with educational institutions, public or private agencies or organizations, or persons for the conduct of scientific or technological research into any aspect of the problems related to the programs of the Department which are authorized by statute.

(2) The Secretary shall require a showing that the institutions, agencies, organizations, or persons with which he expects to enter into contracts pursuant to this subsection have the capability of doing effective work. He shall furnish such advice and assistance as he believes will best carry out the mission of the Department, participate in coordinating all research initiated under this subsection, indicate the lines of inquiry which seem to him most important, and encourage and assist in the establishment and maintenance of cooperation by and between the institutions, agencies, organizations, or persons and between them and other research organizations, the Department, and other Federal agencies.

(3) The Secretary may from time to time disseminate in the form of reports or publications to public or private agencies or organizations, or individuals such information as he deems pertinent on the research carried out pursuant to this section.

(4) Nothing contained in this subsection is intended to amend, modify, or repeal any provisions of law administered by the Department which authorize the making of contracts for research.

(Pub. L. 89-670, § 9, Oct. 15, 1966, 80 Stat. 944; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; Pub. L. 93-496, § 16(b), Oct. 28, 1974, 88 Stat. 1533.)

REFERENCES IN TEXT

The civil service laws, referred to in subsecs. (a) and (o), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

The classification laws, referred to in subsec. (a), are classified generally to chapter 51 (§ 5101 et seq.) and to subchapter III (§ 5331 et seq.) of chapter 53 of Title 5, Government Organization and Employees.

This chapter referred to in subsecs. (a), (e), (f), (g), (i), and (p)(1), read in the original "this Act", meaning Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, known as the Department of Transportation Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1651 of this title and Tables volume.

Section 8(d) and (e) of this Act, referred to in subsec. (g), is section 8(d) and (e) of Pub. L. 89-670 which amended section 312(a) of this title and section 213(b)(1) of Title 29, Labor.

The Executive Schedule, referred to in subsec. (i), is set out in section 5311 et seq., of Title 5, Government Organization and Employees.

AMENDMENTS

1974—Subsec. (p)(1). Pub. L. 93-496 substituted "Deputy Secretary" for "Under Secretary".

TRANSFER OF FUNCTIONS

In subsec. (g), all functions vested by law (including reorganization plan) in the Bureau of the Budget or the Director of the Bureau of the Budget were transferred to the President of the United States by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of Reorg. Plan No. 2 of 1970 redesignated the Bureau of the Budget as the Office of Management and Budget.

TERMINATION OF ADVISORY COMMITTEES

Advisory Committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee es-

tablished by the Congress, its duration is otherwise provided by law. Advisory Committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 136q; title 14 section 42.

§ 1657a. Minority Resource Center

(a) Establishment

The Secretary shall, within 180 days after February 5, 1976, establish a Minority Resource Center (hereafter in this section referred to as the "Center").

(b) Advisory Committee; membership

The Center shall have an Advisory Committee, which shall consist of 5 individuals appointed by the Secretary from lists of 3 qualified individuals recommended by minority-dominated trade associations in the minority business community.

(c) Powers and functions

The Center is authorized to—

(1) establish and maintain, and disseminate information from, a national information clearinghouse for minority entrepreneurs and businesses, for purposes of furnishing, to such entrepreneurs and businesses, information with respect to business opportunities involving the maintenance, rehabilitation, restructuring, improvement, and revitalization of the Nation's railroads;

(2) assist minority entrepreneurs and businesses in obtaining investment capital and debt financing;

(3) conduct market research, planning, economic and business analyses, and feasibility studies to identify such opportunities;

(4) design and conduct programs to encourage, promote, and assist minority entrepreneurs and businesses to secure contracts, subcontracts, and projects related to the maintenance, rehabilitation, restructuring, improvement, and revitalization of the Nation's railroads;

(5) enter into such contracts, cooperative agreements, or other transactions as may be necessary in the conduct of its functions and duties;

(6) develop support mechanisms, including venture capital, surety and bonding organizations, and management and technical services, which will enable minority entrepreneurs and businesses to take advantage of business opportunities related to the maintenance, rehabilitation, restructuring, improvement, and revitalization of the Nation's railroads; and

(7) participate in, and cooperate with, all Federal programs and other programs designed to provide financial, management, and other forms of support and assistance to minority entrepreneurs and businesses.

(d) Assistance in performance of functions by United States Railway Association, etc.

The United States Railway Association, the Consolidated Rail Corporation, and the Secretary shall provide the Center with such relevant information, including procurement schedules, bids, and specifications with respect to particular maintenance, rehabilitation, restructuring, improvement, and revitalization projects, as may be requested by the Center in connection with the performance of its functions.

(e) Definition

As used in this section, the term "minority" includes women.

(Pub. L. 89-670, § 11, as added Pub. L. 94-210, title IX, § 906, Feb. 5, 1976, 90 Stat. 149.)

PRIOR PROVISIONS

A prior section 11 of Pub. L. 89-670 was renumbered section 12 by section 906 of Pub. L. 94-210 and is classified to section 1658 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory Committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law, see section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1658. Annual reports

The Secretary shall, as soon as practicable after the end of each fiscal year, make a report in writing to the President for submission to the Congress on the activities of the Department during the preceding fiscal year.

(Pub. L. 89-670, § 12, formerly § 11, Oct. 15, 1966, 80 Stat. 949, renumbered Pub. L. 94-210, title IX, § 906, Feb. 5, 1976, 90 Stat. 149.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 535h.

§ 1659. Separability of provisions

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the remainder of this chapter, and the application of such provision to other persons or circumstances shall not be affected thereby.

(Pub. L. 89-670, § 14, formerly § 13, Oct. 15, 1966, 80 Stat. 950, renumbered Pub. L. 94-210, title IX, § 906, Feb. 5, 1976, 90 Stat. 149.)

REFERENCES IN TEXT

This chapter referred to in text, read in the original "this Act", meaning Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, known as the Department of Transportation Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1651 of this title and Tables volume.

CHAPTER 24—NATURAL GAS PIPELINE SAFETY

Sec.
1671. Definitions.
1672. Federal safety standards.
(a) Interim standards.
(b) Minimum standards; factors to be considered; State standards.
(c) Effective date of standards.
(d) Administrative procedure.
(e) Waiver of compliance with standards.
1673. Technical Pipeline Safety Standards Committee.
(a) Creation; membership; qualifications.
(b) Report of proposed standards; publication; record of Committee proceedings.
(c) Compensation.
1674. State certifications and agreements.
(a) Report to Secretary by State agency; annual certification.
(b) Agreements with State agencies; notification to Secretary of violations of standards.
(c) Grants to aid State enforcement; withholding funds from State agency.
(d) Recertification.
(e) Termination of agreement.
(f) Payments to States for natural gas pipeline safety inspectors; application deadline; number of inspectors; reimbursement.
1675. Judicial review.
(a) Person aggrieved; venue.
(b) Jurisdiction.
(c) Appeal.
(d) Successors in office.
(e) Remedies.
1676. Cooperation with Federal Power Commission and State commissions.
1677. Compliance with standards, inspection and maintenance requirements, and discovery provisions; tort liability.
1678. Civil penalties.
1679. Injunction and jurisdiction.
(a) Restraint of violations and enforcement of standards.
(b) Criminal contempt.
(c) Venue.
(d) Subpena.
1680. Inspection and maintenance plans.
1681. Records, reports, and inspection.
(a) Compliance with standards.
(b) State enforcement practices; monitoring and inspection.
(c) Accident reports; public information.
(d) Confidential nature of trade secrets.
1682. Administration.
(a) Research and development contracts.
(b) Information furnished to Federal Power Commission.
(c) Cooperation with other agencies.
(d) Consultation with other agencies.
1683. Annual report to the President and Congress.
1684. Authorization of appropriations.
1685. Consumer education program.
1686. Civil actions by citizens.
(a) Mandatory or prohibitive injunctive relief against persons in violation of this chapter.
(b) Restrictions.
(c) Intervention by Attorney General.
(d) Other statutory or common law rights.
(e) Costs and attorney's fees.
(f) Violation of State safety standards or practices.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1811 of this title.

§ 1671. Definitions

As used in this chapter—

(1) "Person" means any individual, firm, joint venture, partnership, corporation, association, State, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof;

(2) "Gas" means natural gas, flammable gas, or gas which is toxic or corrosive;

(3) "Transportation of gas" means the gathering, transmission or distribution of gas by pipeline or its storage in or affecting interstate or foreign commerce; except that it shall not include the gathering of gas in those rural locations which lie outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, a community development, or any similar populated area which the Secretary may define as a nonrural area;

(4) "Pipeline facilities" includes, without limitation, new and existing pipe rights-of-way and any equipment facility, or building used in the transportation of gas or the treatment of gas during the course of transportation but "rights-of-way" as used in this chapter does not authorize the Secretary to prescribe the location or routing of any pipeline facility;

(5) "State" includes each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico;

(6) "Municipality" means a city, county, or any other political subdivision of a State;

(7) "National organization of State commissions" means the national organization of the State commissions referred to in part II of the Interstate Commerce Act [49 U.S.C. 301 et seq.];

(8) "Interstate transmission facilities" means pipeline facilities used in the transportation of gas which are subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act [15 U.S.C. 717 et seq.], except that it shall not include any pipeline facilities within a State which transport gas from an interstate gas pipeline to a direct sales customer within such State purchasing gas for its own consumption;

(9) "Intrastate pipeline transportation" means pipeline facilities and transportation of gas within a State which are not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act [15 U.S.C. 717 et seq.], except that it shall include pipeline facilities within a State which transport gas from an interstate gas pipeline to a direct sales customer within such State purchasing gas for its own consumption; and

(10) "Secretary" means the Secretary of Transportation.

(Pub. L. 90-481, § 2, Aug. 12, 1968, 82 Stat. 720; Pub. L. 94-477, § 3, Oct. 11, 1976, 90 Stat. 2073.)

REFERENCES IN TEXT

The Interstate Commerce Act, referred to in par. (7), is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended.

Part II of the Interstate Commerce Act was added by act Aug. 9, 1935, ch. 498, 49 Stat. 543, and is classified generally to chapter 8 (§ 301 et seq.) of this title. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of this title and Tables volume.

The Natural Gas Act, referred to in pars. (8) and (9), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables volume.

AMENDMENTS

1976—Par. (8). Pub. L. 94-477, § 3(1), added exception that "Interstate transmission facilities" not include any pipeline facilities within a State which transport gas from an interstate gas pipeline to a direct sales customer within such State purchasing gas for its own consumption.

Par. (9). Pub. L. 94-477, § 3(2), added par. (9). Former par. (9) redesignated (10).

Par. (10). Pub. L. 94-477, § 3(2), redesignated former par. (9) as (10).

SHORT TITLE OF 1976 AMENDMENT

Section 1 of Pub. L. 94-477 provided: "That this Act [enacting sections 1685 and 1686 of this title and amending sections 1671, 1672, 1674, 1680, 1683, and 1684 of this title] may be cited as the 'Natural Gas Pipeline Safety Act Amendments of 1976'."

SHORT TITLE OF 1974 AMENDMENT

Pub. L. 93-403, § 1, Aug. 30, 1974, 88 Stat. 802, provided: "That this Act [amending sections 1674 and 1684 of this title] may be cited as the 'Natural Gas Pipeline Safety Act Amendments of 1974'."

SHORT TITLE

Section 1 of Pub. L. 90-481 provided: "That this Act [enacting this chapter] may be cited as the 'Natural Gas Pipeline Safety Act of 1968'."

§ 1672. Federal safety standards

(a) Interim standards

As soon as practicable but not later than three months after August 12, 1968, the Secretary shall, by order, adopt as interim minimum Federal safety standards for pipeline facilities and the transportation of gas in each State the State standards regulating pipeline facilities and the transportation of gas within such State on August 12, 1968. In any State in which no such standards are in effect, the Secretary shall, by order, establish interim Federal safety standards for pipeline facilities and the transportation of gas in such State which shall be such standards as are common to a majority of States having safety standards for the transportation of gas and pipeline facilities on such date. Interim standards shall remain in effect until amended or revoked pursuant to this section. Any State agency may adopt such additional or more stringent standards for pipeline facilities and the transportation of gas not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act [15 U.S.C. 717 et seq.] as are not incompatible with the Federal minimum standards, but may not adopt or continue in force after the interim standards provided for above become effective any such standards applicable to interstate transmission facilities.

(b) Minimum standards; factors to be considered; State standards

Not later than twenty-four months after August 12, 1968, and from time to time thereafter, the Secretary shall, by order, establish minimum Federal safety standards for the transportation of gas and pipeline facilities. Such standards may apply to the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities. Standards affecting the design, installation, construction, initial inspection, and initial testing shall not be applicable to pipeline facilities in existence on the date such standards are adopted. Whenever the Secretary shall find a particular facility to be hazardous to life or property, he shall be empowered to require the person operating such facility to take such steps necessary to remove such hazards. Such Federal safety standards shall be practicable and designed to meet the need for pipeline safety. In prescribing such standards, the Secretary shall consider—

(1) relevant available pipeline safety data;

(2) whether such standards are appropriate for the particular type of pipeline transportation;

(3) the reasonableness of any proposed standards; and

(4) the extent to which such standards will contribute to public safety.

Any State agency may adopt additional or more stringent standards for intrastate pipeline transportation if such standards are compatible with the Federal minimum standards. No State agency may adopt or continue in force any such standards applicable to interstate transmission facilities, after the Federal minimum standards become effective.

(c) Effective date of standards

Any standards prescribed under this section, and amendments thereto, shall become effective thirty days after the date of issuance of such standards unless the Secretary, for good cause recited, determines an earlier or later effective date is required as a result of the period reasonably necessary for compliance.

(d) Administrative procedure

The provisions of subchapter II of chapter 5 of title 5 shall apply to all orders establishing, amending, revoking, or waiving compliance with, any standard established under this chapter. The Secretary shall afford interested persons an opportunity to participate fully in the establishment of such safety standards through submission of written data, views, or arguments with opportunity to present oral testimony and argument.

(e) Waiver of compliance with standards

Upon application by any person engaged in the transportation of gas or the operation of pipeline facilities, the Secretary may, after notice and opportunity for hearing and under such terms and conditions and to such extent as he deems appropriate, waive in whole or in part compliance with any standard established under this chapter, if he determines that a waiver of compliance with such standard is not inconsistent with gas pipeline safety. The Sec-

retary shall state his reasons for any such waiver. A State agency, with respect to which there is in effect a certification pursuant to section 1674(a) of this title or an agreement pursuant to section 1674(b) of this title, may waive compliance with a safety standard in the same manner as the Secretary, provided such State agency gives the Secretary written notice at least sixty days prior to the effective date of the waiver. If, before the effective date of a waiver to be granted by a State agency, the Secretary objects in writing to the granting of the waiver, any State agency action granting the waiver will be stayed. After notifying such State agency of his objection, the Secretary shall afford such agency a prompt opportunity to present its request for waiver, with opportunity for hearing, and the Secretary shall determine finally whether the requested waiver may be granted.

(Pub. L. 90-481, § 3, Aug. 12, 1968, 82 Stat. 720; Pub. L. 94-477, § 4, Oct. 11, 1976, 90 Stat. 2073.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (a), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables volume.

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-477 added "emergency plans and procedures," after "installation, inspection," in the provisions preceding par. (1) and substituted reference to intrastate pipeline transportation for reference to pipeline facilities and the transportation of gas not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act in the provisions following par. (4).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1674, 1683 of this title.

§ 1673. Technical Pipeline Safety Standards Committee

(a) Creation; membership; qualifications

The Secretary shall establish a Technical Pipeline Safety Standards Committee. The Committee shall be appointed by the Secretary, after consultation with public and private agencies concerned with the technical aspect of the transportation of gas or the operation of pipeline facilities, and shall be composed of fifteen members each of whom shall be experienced in the safety regulation of the transportation of gas and of pipeline facilities or technically qualified by training and experience in one or more fields of engineering applied in the transportation of gas or the operation of pipeline facilities to evaluate gas pipeline safety standards, as follows:

(1) Five members shall be selected from governmental agencies, including State and Federal Governments, two of whom, after consultation with representatives of the national organization of State commissions, shall be State commissioners;

(2) Four members shall be selected from the natural gas industry after consultation with industry representatives, not less than three of whom shall be currently engaged in the active operation of natural gas pipelines; and

(3) Six members shall be selected from the general public.

(b) Report of proposed standards; publication; record of Committee proceedings

The Secretary shall submit to the Committee all proposed standards and amendments to such standards and afford such Committee a reasonable opportunity, not to exceed ninety days, unless extended by the Secretary, to prepare a report on the technical feasibility, reasonableness, and practicability of each such proposal. Each report by the Committee, including any minority views, shall be published by the Secretary and form a part of the proceedings for the promulgation of standards. In the event that the Secretary rejects the conclusions of the majority of the Committee, he shall not be bound by such conclusions but shall publish his reasons for rejection thereof. The Committee may propose safety standards for pipeline facilities and the transportation of gas to the Secretary for his consideration. All proceedings of the Committee shall be recorded and the record of each such proceeding shall be available for public inspection.

(c) Compensation

Members of the Committee other than Federal employees may be compensated at a rate to be fixed by the Secretary not to exceed $100 per diem (including travel time) when engaged in the actual duties of the Committee. All members, while away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5 for persons in the Government service employed intermittently. Payments under this section shall not render members of the Committee employees or officials of the United States for any purpose.

(Pub. L. 90-481, § 4, Aug. 12, 1968, 82 Stat. 722.)

§ 1674. State certifications and agreements

(a) Report to Secretary by State agency; annual certification

Except for the fourth sentence of section 1672(b) of this title, section 1681(b) of this title, and except as otherwise provided in this section, the provisions of this chapter shall not apply to intrastate pipeline transportation when the safety standards and practices applicable to same are regulated by a State agency (including a municipality) which submits to the Secretary an annual certification that such State agency (1) has regulatory jurisdiction over the safety standards and practices of such transportation; (2) has adopted, as of the date of the certification, each Federal safety standard established under this chapter which is applicable to such transportation or, with respect to each such Federal safety standard established within one hundred and twenty days before the date of the certification, is taking steps pursuant to State law to adopt such standard; (3) is enforcing each such standard; (4) is encouraging and promoting programs designed to prevent damage to pipeline facilities as a consequence of excavation activity; and (5)

has the authority to require record maintenance, reporting, and inspection substantially the same as are provided under section 1681 of this title and the filing for approval of plans of inspection and maintenance described in section 1680 of this title; and that the law of the State makes provision for the enforcement of the safety standards of such State agency by way of injunctive and monetary sanctions substantially the same as are provided under sections 1678 and 1679 of this title; except that a State agency may file a certification under this subsection without regard to the requirement of injunctive and monetary sanctions under State law for a period not to exceed five years after August 12, 1968. Each annual certification shall include a report, in such form as the Secretary may by regulation provide, showing (i) name and address of each person subject to the safety jurisdiction of the State agency; (ii) all accidents or incidents reported during the preceding twelve months by each such person involving personal injury requiring hospitalization, fatality, or property damage exceeding $1,000, together with a summary of the State agency's investigation as to the cause and circumstances surrounding such accident or incident; (iii) the record maintenance, reporting, and inspection practiced by the State agency to enforce compliance with such Federal safety standards, including a detail of the number of inspections made of pipeline facilities by the State agency during the preceding twelve months; and (iv) such other information as the Secretary may require. The report included with the first annual certification need not show information unavailable at that time. If after receipt of annual certification, the Secretary determines that the State agency is not satisfactorily enforcing compliance with Federal safety standards, he may, on reasonable notice and after opportunity for hearing, reject the certification or take such other action as he deems appropriate to achieve adequate enforcement including the assertion of Federal jurisdiction. When such notice is given by the Secretary, the burden of proof shall be upon the State agency to show that it is satisfactorily enforcing compliance with Federal safety standards.

(b) Agreements with State agencies; notification to Secretary of violations of standards

With respect to any intrastate pipeline transportation for which the Secretary does not receive an annual certification under subsection (a) of this section, the Secretary may, by agreement with a State agency (including a municipality) authorize such agency to assume responsibility for, and carry out on behalf of the Secretary as it relates to intrastate pipeline transportation the necessary actions to—

(1) establish an adequate program for record maintenance, reporting, and inspection designed to assist compliance with Federal safety standards;

(2) establish procedures for approval of plans of inspection and maintenance substantially the same as are required under section 1680 of this title;

(3) implement a compliance program acceptable to the Secretary including provision for inspection of pipeline facilities used in such transportation of gas; and

(4) cooperate fully in a system of Federal monitoring of such compliance program and reporting under regulations prescribed by the Secretary.

Any agreement executed pursuant to this subsection shall require the State agency promptly to notify the Secretary of any violation or probable violation of a Federal safety standard which it discovers as a result of its program.

(c) Grants to aid State enforcement; withholding funds from State agency

(1) Except as otherwise provided in this section, if an application is submitted not later than September 30 in any calendar year, the Secretary shall pay out of funds appropriated or otherwise made available up to 50 per centum of the cost of the personnel, equipment, and activities of a State agency reasonably required, during the following calendar year to carry out a safety program under a certification under subsection (a) or an agreement under subsection (b) of this section; or to act as agent of the Secretary with respect to interstate transmission facilities. The Secretary may, after notice and consultation with a State agency, withhold all or any part of the funds for a particular State agency if he determines that such State agency (A) is not satisfactorily carrying out a safety program under a certification under subsection (a) or an agreement under subsection (b) of this section, or (B) is not satisfactorily acting as agent of the Secretary with respect to interstate transmission facilities. No such payment may be made unless the State agency making application under this subsection gives assurances satisfactory to the Secretary that the State agency will provide the remaining cost of such a safety program and that the aggregate expenditures of funds of the State, exclusive of Federal grants, for gas safety programs will be maintained at a level which does not fall below the average level of such expenditures for the last two fiscal years preceding August 12, 1968.

(2) Funds authorized to be appropriated by section 1684(b) of this title shall be allocated among the several States for payments to aid in the conduct of pipeline safety programs in accordance with paragraph (1) of this subsection.

(3) Payments under this section may be made in installments, in advance or by way of reimbursement, with necessary adjustments on account of overpayments and underpayments.

(4) The Secretary may, by regulation, provide for the form and manner of filing of applications under this section, and for such reporting and fiscal procedures as he deems necessary to assure the proper accounting for Federal funds.

(d) Recertification

A certification which is in effect under subsection (a) of this section shall not apply with respect to any new or amended Federal safety standard established for intrastate pipeline transportation pursuant to this chapter after the date of such certification. The provisions of this chapter shall apply to any such new or amended Federal safety standard until the State agency has adopted such standard and has submitted an appropriate certification in

accordance with the provisions of subsection (a) of this section.

(e) Termination of agreement

Any agreement under this section may be terminated by the Secretary if, after notice and opportunity for a hearing, he finds that the State agency has failed to comply with any provision of such agreement. Such finding and termination shall be published in the Federal Register, and shall become effective no sooner than fifteen days after the date of publication.

(f) Payments to States for natural gas pipeline safety inspectors; application deadline; number of inspectors; reimbursement

(1) During the fiscal year ending September 30, 1978, the Secretary shall, in accordance with regulations issued by the Secretary taking into account the needs of the respective States, pay to each State agency out of funds appropriated or otherwise made available one hundred percent of the cost (not to exceed $60,000 for each State agency) of not more than three full-time natural gas pipeline safety inspectors in addition to, and not in lieu of, the number of natural gas pipeline safety inspectors maintained by such State agency in calendar year 1977.

(2) Not later than September 30, 1977, any State may apply to receive funds under paragraph (1) for the calendar year 1978.

(3) Each State agency which receives funds under paragraph (1) shall continue to maintain during calendar years 1979 and 1980 not less than the number of full-time natural gas pipeline safety inspectors which were maintained by such State agency in calendar year 1978.

(4) Any State in which the State agency fails to meet its obligations under paragraph (3) shall reimburse the Secretary for a sum equal to 50 percent of the funds received by such State under this subsection in proportion to which such State agency has failed to meet its obligations.

(Pub. L. 90–481, § 5, Aug. 12, 1968, 82 Stat. 722; Pub. L. 92–401, §§ 1, 2, Aug. 22, 1972, 86 Stat. 616; Pub. L. 93–403, § 2, Aug. 30, 1974, 88 Stat. 802; Pub. L. 94–477, § 5, Oct. 11, 1976, 90 Stat. 2073.)

CODIFICATION

Reference in subsec. (c)(2) to paragraph (1) of this "subsection" was, in the original, a reference to paragraph (1) of this "section". Substitution of "subsection" for "section" was made to reflect the probable intent of Congress.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–477, § 5(a), substituted "intrastate pipeline transportation" for "pipeline facilities and the transportation of gas (not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act) within a State" in the provisions preceding cl. (1), "transportation" for "pipeline facilities and transportation of gas" in cl. (1), and provision permitting State agency certification where State agency seeks to adopt Federal safety standards established within one hundred and twenty days before certification for provision limiting certification to instances where State agency has adopted each Federal safety standard established as of the date of certification in cl. (2), added cl. (4), and redesignated former cl. (4) as (5).

Subsec. (b). Pub. L. 94–477, § 5(b), substituted reference to intrastate pipeline transportation for reference to pipeline facilities and transportation of gas not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act in two places, and "the Secretary may, by agreement with a State agency (including a municipality) authorize" for "the Secretary is authorized by agreement with a State agency (including a municipality) to authorize" in the provisions preceding cl. (1).

Subsec. (d). Pub. L. 94–477, § 5(c), substituted "safety standard established for intrastate pipeline transportation pursuant to this chapter" for "safety standard for pipeline facilities or the transportation of gas, not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act, established pursuant to this chapter".

Subsec. (f). Pub. L. 94–477, § 5(d), added subsec. (f).

1974—Subsec. (c). Pub. L. 93–403 redesignated pars. (2) and (3) as pars. (3) and (4), respectively, and added par. (2).

1972—Subsec. (a). Pub. L. 92–401, § 1, substituted "five" for "two" years in first sentence.

Subsec. (c)(1). Pub. L. 92–401, § 2, inserted introductory phrase "Except as otherwise provided in this section", provision for State agency acting as agent of the Secretary with respect to interstate transmission facilities, and provision for withholding funds for not carrying out satisfactorily the State safety program or acting as agent with respect to the interstate transmission facilities.

STATE PIPELINE SAFETY PROGRAMS; REPORT TO PRESIDENT AND CONGRESS

Section 5 of Pub. L. 92–401 required the Secretary of Transportation, after consultation with the cooperating State agencies and the national organization of State Commissions, to prepare and submit to the President for transmittal to the Congress on March 17, 1973, a report which contained a description of the pipeline safety program being conducted in each State, the annual projections of each State agency's needs for personnel, equipment, and activities reasonably required to carry out such State's program during each calendar year from 1973 through 1978 and estimates of the annual costs thereof, the source or sources of State funds to finance such programs, the amount of Federal assistance needed annually, an evaluation of alternative methods of allotting Federal funds among the States which desire Federal assistance, including recommendations, if needed for a statutory formula for apportioning Federal funds, and a discussion of other problems affecting cooperation among the States that relate to effective participation of State agencies in the national pipeline safety program.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1672, 1680, 1683, 1684, 1686 of this title.

§ 1675. Judicial review

(a) Person aggrieved; venue

Any person who is or will be adversely affected or aggrieved by any order issued under this chapter may at any time prior to the sixtieth day after such order is issued file a petition for a judicial review with the United States Court of Appeals for the District of Columbia or for the circuit wherein such petitioner is located or has his principal place of business. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose.

(b) Jurisdiction

Upon the filing of the petition referred to in subsection (a) of this section, the court shall have jurisdiction to review the order in accordance with chapter 7 of title 5 and to grant appropriate relief as provided in such chapter.

(c) Appeal

The judgment of the court affirming or setting aside, in whole or in part, any such order of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(d) Successors in office

Any action instituted under this section shall survive, notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

(e) Remedies

The remedies provided for in this section shall be in addition to and not in substitution for any other remedies provided by law.

(Pub. L. 90–481, § 6, Aug. 12, 1968, 82 Stat. 724.)

§ 1676. Cooperation with Federal Power Commission and State commissions

Whenever the establishment of a standard or action upon application for waiver under the provisions of this chapter, would affect continuity of any gas services, the Secretary shall consult with and advise the Federal Power Commission or State commission having jurisdiction over the affected pipeline facility before establishing the standard or acting on the waiver application and shall defer the effective date until the Federal Power Commission or any such commission has had reasonable opportunity to grant the authorizations it deems necessary. In any proceedings under section 717f of title 15 for authority to establish, construct, operate, or extend a gas pipeline which is or will be subject to Federal or other applicable safety standards, any applicant shall certify that it will design, install, inspect, test, construct, operate, replace, and maintain the pipeline facilities in accordance with Federal and other applicable safety standards and plans for maintenance and inspection. Such certification shall be binding and conclusive upon the Commission unless the relevant enforcement agency has timely advised the Commission in writing that the applicant has violated safety standards established pursuant to this chapter.

(Pub. L. 90–481, § 7, Aug. 12, 1968, 82 Stat. 725.)

§ 1677. Compliance with standards, inspection and maintenance requirements, and discovery provisions; tort liability

(a) Each person who engages in the transportation of gas or who owns or operates pipeline facilities shall—

(1) at all times after the date any applicable safety standard established under this chapter takes effect comply with the requirements of such standard; and

(2) file and comply with a plan of inspection and maintenance required by section 1680 of this title; and

(3) permit access to or copying of records, and make reports or provide information, and permit entry or inspection, as required under section 1681 of this title.

(b) Nothing in this chapter shall affect the common law or statutory tort liability of any person.

(Pub. L. 90–481, § 8, Aug. 12, 1968, 82 Stat. 725.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1678 of this title.

§ 1678. Civil penalties

(a) Any person who violates any provision of section 1677(a) of this title, or any regulation issued under this chapter, shall be subject to a civil penalty of not to exceed $1,000 for each such violation for each day that such violation persists, except that the maximum civil penalty shall not exceed $200,000 for any related series of violations: *Provided*, That for a reasonable period of time, not to exceed one year after August 12, 1968, such civil penalties shall not be applicable to pipeline facilities existing on August 12, 1968.

(b) Any such civil penalty may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged or may be recovered in a civil action in the United States district courts.

(Pub. L. 90–481, § 9, Aug. 12, 1968, 82 Stat. 725.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1674, 1679 of this title.

§ 1679. Injunction and jurisdiction

(a) Restraint of violations and enforcement of standards

The United States district courts shall have jurisdiction, subject to the provisions of rule 65(a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this chapter (including the restraint of transportation of gas or the operation of a pipeline facility) or to enforce standards established hereunder upon petition by the appropriate United States attorney or the Attorney General on behalf of the United States. Whenever practicable, the Secretary shall give notice to any person against whom an action for injunctive relief is contemplated and afford him an opportunity to present his views, and, except in the case of a knowing and willful violation, shall afford him reasonable opportunity to achieve compliance. However, the failure to give such notice and afford such opportunity shall not preclude the granting of appropriate relief.

(b) Criminal contempt

In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, which violation also constitutes a violation of this chapter, trial shall be by the court or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings sub-

ject to the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

(c) Venue

Actions under subsection (a) of this section and section 1678 of this title may be brought in the district wherein any act or transaction constituting the violation occurred, or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found.

(d) Subpena

In any action brought under subsection (a) of this section and section 1678 of this title, subpenas for witnesses who are required to attend a United States district court may run into any other district.

(Pub. L. 90-481, § 10, Aug. 12, 1968, 82 Stat. 726.)

REFERENCES IN TEXT

Rule 65(a) and (b) of the Federal Rules of Civil Procedure, referred to in subsec. (a), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 42(b) of the Federal Rules of Criminal Procedure, referred to in subsec. (b), is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1674 of this title.

§ 1680. Inspection and maintenance plans

Each person who engages in the transportation of gas or who owns or operates intrastate pipeline transportation facilities shall file with the Secretary or, if a certification or an agreement pursuant to section 1674 of this title is in effect, with the appropriate State agency, a plan for inspection and maintenance of each facility used in such transportation and owned or operated by such person, and any changes in such plan, in accordance with regulations prescribed by the Secretary or appropriate State agency. The Secretary may, by regulation, also require persons who engage in the transportation of gas or who own or operate pipeline facilities subject to the provisions of this chapter to file such plans for approval. If at any time the agency with responsibility for enforcement of compliance with the standards established under this chapter finds that such plan is inadequate to achieve safe operation, such agency shall, after notice and opportunity for a hearing, require such plan to be revised. The plan required by the agency shall be practicable and designed to meet the need for pipeline safety. In determining the adequacy of any such plan, such agency shall consider—

(1) relevant available pipeline safety data;

(2) whether the plan is appropriate for the particular type of pipeline transportation;

(3) the reasonableness of the plan; and

(4) the extent to which such plan will contribute to public safety.

(Pub. L. 90-481, § 11, Aug. 12, 1968, 82 Stat. 726; Pub. L. 94-477, § 6, Oct. 11, 1976, 90 Stat. 2075.)

AMENDMENTS

1976—Pub. L. 94-477 substituted "intrastate pipeline transportation facilities" for "pipeline facilities not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act", "if a certification" for "where a certification", "the appropriate State agency" for "the State agency", and "each facility used in such transportation and owned" for "each such pipeline facility owned".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1674, 1677 of this title.

§ 1681. Records, reports, and inspection

(a) Compliance with standards

Each person who engages in the transportation of gas or who owns or operates pipeline facilities shall establish and maintain such records, make such reports, and provide such information as the Secretary may reasonably require to enable him to determine whether such person has acted or is acting in compliance with this chapter and the standards established under this chapter. Each such person shall, upon request of an officer, employee, or agent authorized by the Secretary, permit such officer, employee, or agent to inspect books, papers, records, and documents relevant to determining whether such person has acted or is acting in compliance with this chapter and the standards established pursuant to this chapter.

(b) State enforcement practices; monitoring and inspection

The Secretary is authorized to conduct such monitoring of State enforcement practices and such other inspection and investigation as may be necessary to aid in the enforcement of the provisions of this chapter and the standards established pursuant to this chapter. He shall furnish the Attorney General any information obtained indicating noncompliance with such standards for appropriate action. For purposes of enforcement of this chapter, officers, employees, or agents authorized by the Secretary, upon presenting appropriate credentials to the individual in charge, are authorized (1) to enter upon, at reasonable times, pipeline facilities, and (2) to inspect, at reasonable times and within reasonable limits and in a reasonable manner, such facilities. Each such inspection shall be commenced and completed with reasonable promptness.

(c) Accident reports; public information

Accident reports made by any officer, employee, or agent of the Department of Transportation shall be available for use in any civil, criminal, or other judicial proceeding arising out of such accident. Any such officer, employee, or agent may be required to testify in such proceedings as to the facts developed in such investigations. Any such report shall be made available to the public in a manner which need not identify individuals. All reports on research projects, demonstration projects, and other related activities shall be public information.

(d) Confidential nature of trade secrets

All information reported to or otherwise obtained by the Secretary or his representative pursuant to subsection (a), (b), or (c) of this section which information contains or relates to

a trade secret referred to in section 1905 of title 18 shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant in any proceeding under this chapter. Nothing in this section shall authorize the withholding of information by the Secretary or any officer, employee, or agent under his control, from the duly authorized committees of the Congress.

(Pub. L. 90-481, § 12, Aug. 12, 1968, 82 Stat. 727.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1674, 1677 of this title.

§ 1682. Administration

(a) Research and development contracts

The Secretary shall conduct research, testing, development, and training necessary to carry out the provisions of this chapter. The Secretary is authorized to carry out the provisions of this section by contract, or by grants to individuals, States, and nonprofit institutions.

(b) Information furnished to Federal Power Commission

Upon request, the Secretary shall furnish to the Federal Power Commission any information he has concerning the safety of any materials, operations, devices, or processes relating to the transportation of gas or the operation of pipeline facilities.

(c) Cooperation with other agencies

The Secretary is authorized to advise, assist, and cooperate with other Federal departments and agencies and State and other interested public and private agencies and persons, in the planning and development of (1) Federal safety standards, and (2) methods for inspecting and testing to determine compliance with Federal safety standards.

(d) Consultation with other agencies

The Secretary is authorized to consult with, and make recommendations to, other Federal departments and agencies, State and local governments, and other public and private agencies or persons, for the purpose of developing and encouraging activities, including the enactment of legislation, to assist in the implementation of this chapter and to improve State and local pipeline safety programs.

(Pub. L. 90-481, § 13, Aug. 12, 1968, 82 Stat. 727; Pub. L. 92-401, § 3, Aug. 22, 1972, 86 Stat. 616.)

AMENDMENTS

1972—Subsec. (d). Pub. L. 92-401 added subsec. (d).

§ 1683. Annual report to the President and Congress

(a) The Secretary shall prepare and submit to the President for transmittal to the Congress on March 17 of each year a comprehensive report on the administration of this chapter for the preceding calendar year. Such report shall include—

(1) a thorough compilation of the leak repairs, accidents, and casualties occurring in such year with a statement of cause whenever investigated and determined by the National Transportation Safety Board;

(2) a list of Federal gas pipeline safety standards established or in effect in such year with identification of standards newly established during such year;

(3) a summary of the reasons for each waiver granted under section 1672(e) of this title during such year;

(4) an evaluation of the degree of observance of applicable safety standards for the transportation of gas and pipeline facilities including a list of enforcement actions, and compromises of alleged violations by location and company name;

(5) a summary of outstanding problems confronting the administration of this chapter in order of priority;

(6) an analysis and evaluation of research activities, including the policy implications thereof, completed as a result of Government and private sponsorship and technological progress for safety achieved during such year;

(7) a list, with a brief statement of the issues, of completed or pending judicial actions under this chapter;

(8) the extent to which technical information was disseminated to the scientific community and consumer-oriented information was made available to the public;

(9) a compilation of—

(A) certifications filed by State agencies (including municipalities) under section 1674(a) of this title which were in effect during the preceding calendar year, and

(B) certifications filed under section 1674(a) of this title which were rejected by the Secretary during the preceding calendar year, together with a summary of the reasons for each such rejection; and

(10) a compilation of—

(A) agreements entered into with State agencies (including municipalities) under section 1674(b) of this title which were in effect during the preceding calendar year, and

(B) agreements entered into under section 1674(b) of this title which were terminated by the Secretary during the preceding calendar year, together with a summary of the reasons for each such termination.

(b) The report required by subsection (a) of this section shall contain such recommendations for additional legislation as the Secretary deems necessary to promote cooperation among the several States in the improvement of gas pipeline safety and to strengthen the national gas pipeline safety program.

(Pub. L. 90-481, § 14, Aug. 12, 1968, 82 Stat. 728; Pub. L. 94-477, § 7, Oct. 11, 1976, 90 Stat. 2075.)

AMENDMENTS

1976—Subsec. (a)(1). Pub. L. 94-477 substituted "leak repairs, accidents, and casualties" for "accidents and casualties".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1672 of this title.

§ 1684. Authorization of appropriations

(a) There are authorized to be appropriated $2,000,000 for the fiscal year ending June 30, 1975, $2,850,000 for the fiscal year ending June 30, 1976, $500,000 for the period beginning July 1, 1976, and ending September 30, 1976, $4,664,000 for the fiscal year ending September 30, 1977, and $5,000,000 for the fiscal year ending September 30, 1978, for the purpose of carrying out the provisions of this chapter, except that the funds appropriated pursuant to this subsection shall not be used for Federal grants-in-aid.

(b) For the purpose of carrying out the provisions of section 1674(c) and (f) of this title, there are authorized to be appropriated for Federal grants-in-aid, $1,800,000 for the fiscal year ending June 30, 1975, $2,500,000 for the fiscal year ending June 30, 1976, $2,500,000 for the fiscal year ending September 30, 1977, and $4,500,000 for the fiscal year ending September 30, 1978.

(Pub. L. 90-481, § 15, Aug. 12, 1968, 82 Stat. 729; Pub. L. 92-401, § 4, Aug. 22, 1972, 86 Stat. 616; Pub. L. 93-403, § 3, Aug. 30, 1974, 88 Stat. 801; Pub. L. 94-477, § 2, Oct. 11, 1976, 90 Stat. 2073.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-477, § 2(1), authorized appropriations of $500,000 for the period beginning July 1, 1976, and ending Sept. 30, 1976, $4,664,000 for the fiscal year ending Sept. 30, 1977, and $5,000,000 for the fiscal year ending Sept. 30, 1978.

Subsec. (b). Pub. L. 94-477, § 2(2), substituted "section 1674(c) and (f)" for "section 1674(c)", and authorized appropriations of $2,500,000 for the fiscal year ending Sept. 30, 1977, and $4,500,000 for the fiscal year ending Sept. 30, 1978.

1974—Pub. L. 93-403 designated existing provisions as subsec. (a) and, in subsec. (a) as so designated, substituted provisions authorizing appropriations of $2,000,000 and $2,850,000 for fiscal years ending June 30, 1975, and June 30, 1976, respectively, to be used in programs other than Federal grants-in-aid, for provisions authorizing appropriations of $3,000,000, $3,800,000, and $5,000,000 for fiscal years ending June 30, 1972, 1973, and 1974, respectively, and added subsec. (b).

1972—Pub. L. 92-401 substituted appropriations authorization of $3,000,000, $3,800,000, and $5,000,000 for fiscal years ending June 30, 1972, 1973, and 1974, for prior appropriations authorization of $500,000, $2,000,000, and $4,000,000 for fiscal years ending June 30, 1969, 1970, and 1971.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1674 of this title.

§ 1685. Consumer education program

Each person who engages in the transportation of gas shall, in accordance with the regulations prescribed by the Secretary, conduct a program to educate the public on the possible hazards associated with gas leaks and on the importance of reporting gas odors and leaks to appropriate authorities. The Secretary may develop materials suitable for use in such education programs.

(Pub. L. 90-481, § 16, as added Pub. L. 94-477, § 8, Oct. 11, 1976, 90 Stat. 2075.)

§ 1686. Civil actions by citizens

(a) Mandatory or prohibitive injunctive relief against persons in violation of this chapter

Except as provided in subsection (b) of this section, any person may commence a civil action for mandatory or prohibitive injunctive relief, including interim equitable relief, against any other person (including any State, municipality, or other governmental entity to the extent permitted by the eleventh amendment to the Constitution, and the United States) who is alleged to be in violation of this chapter or of any order or regulation issued under this chapter. The district courts of the United States shall have jurisdiction over actions brought under this section, without regard to the amount in controversy or the citizenship of the parties.

(b) Restrictions

No civil action may be commenced under subsection (a) of this section with respect to any alleged violation of this chapter or any order or regulation issued under this chapter—

(1) prior to the expiration of 60 days after the plaintiff has given notice of such alleged violation to the Secretary (or to the applicable State agency in the case of a State which has been certified under section 1674(a) of this title and in which the violation is alleged to have occurred), and to any person who is alleged to have committed such violation; or

(2) if the Secretary (or such State agency) has commenced and is diligently pursuing administrative proceedings or the Attorney General of the United States (or the chief law enforcement officer of such State) has commenced and is diligently pursuing judicial proceedings with respect to such alleged violation.

Notice under this subsection shall be given in such manner as the Secretary shall prescribe by regulation.

(c) Intervention by Attorney General

In any action under subsection (a) of this section, the Secretary (with the concurrence of the Attorney General) or the Attorney General may intervene as a matter of right.

(d) Other statutory or common law rights

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or at common law to seek enforcement of this chapter or any order or regulation under this chapter or to seek any other relief.

(e) Costs and attorney's fees

In any action under this section the court may, in the interest of justice, award the costs of suit, including reasonable attorney's fees and reasonable expert witnesses fees, to a prevailing plaintiff. Such court may, in the interest of justice award such costs to a prevailing defendant whenever such action is unreasonable, frivolous, or meritless. For purposes of this subsection a reasonable attorney's fee is a fee (1) which is based upon (A) the actual time expended by an attorney in providing advice and other legal services in connection with representing a person in an action brought under this section, and (B) such reasonable expenses

as may be incurred by the attorney in the provision of such services, and (2) which is computed at the rate prevailing for the provision of similar services with respect to actions brought in the court which is awarding such fee.

(f) Violation of State safety standards or practices

For purposes of this section, a violation of any safety standard or practice of any State shall be deemed to be a violation of this chapter or of any order or regulation under this chapter only to the extent that such standard or practice is not more stringent than the comparable Federal minimum safety standard.

(Pub. L. 90-481, § 17, as added Pub. L. 94-477, § 8, Oct. 11, 1976, 90 Stat. 2075.)

CHAPTER 25—AVIATION FACILITIES EXPANSION AND IMPROVEMENT

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
1701. Congressional declaration of policy.
1702. National transportation policy.
(a) Formulation.
(b) Annual report.
1703. Omitted.
1704. Reduction of nonessential expenditures.

SUBCHAPTER II—AIRPORT AND AIRWAY DEVELOPMENT

1711. Definitions.
1712. National airport system plan.
(a) Formulation.
(b) Consideration of other modes of transportation.
(c) Federal, State, and other agencies.
(d) Cooperation with Federal Communications Commission.
(e) Consultation with Department of Defense.
(f) Consultation concerning environmental changes.
(g) Cooperation with Federal Power Commission.
(h) Omitted.
(i) Revised system plan.
1713. Planning grants.
(a) Authorization to make grants.
(b) Amount and limitation of grants.
(c) Regulations; coordination with Secretary of Housing and Urban Development.
1713a. Demonstration projects related to airport ground transportation services; implementation; priority.
1714. Airport and airway development program.
(a) General authority.
(b) Obligational authority.
(c) Airway facilities.
(d) Research, development, and demonstrations.
(e) Other expenses.
(f) Preservation of funds and priority for airport and airway programs.
1715. Distribution of funds; State apportionment.
(a) Apportionment of funds; discretionary fund addition from unexpended amounts; passengers enplaned.
(b) Discretionary fund; creation and uses.
(c) Notice of apportionment; definitions.
1716. Project applications for airport development.
(a) Submission.
(b) Public agencies subject to State law.
(c) Approval.
(d) Hearings.
(e) Air and water quality.
(f) Airport site selection; metropolitan area.
(g) State standards; authorization of appropriations.
(h) Acceptance by Secretary of certification from sponsor or planning agency; requirements.
1717. United States share of project costs.
(a) General provision.
(b) Projects in public land States.
(c) Projects in Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.
(d) Landing aids; cost limitation.
1718. Project sponsorship requirements; compliance; contracts between Secretary and public agencies; air traffic control activities; relief of sponsors; consultation.
(1) Public use; requirements.
(2) Maintenance and operation.
(3) Airport hazards.
(4) Compatible use of adjacent land.
(5) Government use; charge.
(6) Air traffic control activities.
(7) Accounting.
(8) Self-sustaining fee and rental structure.
(9) Reports.
(10) Inspection of records.
1719. Grant agreements; offer of terms and conditions; acceptance.
1720. Project costs.
(a) Allowable project costs; regulations.
(b) Terminal development.
(c) Disallowable project costs.
1721. Payments under grant agreements; advance payments; percentage; recovery of excess and advance payments.
1722. Performance of construction work.
(a) Regulations.
(b) Minimum wage rates.
(c) Other labor provisions.
1723. Use of Government-owned lands.
(a) Requests for use.
(b) Execution of conveyances.
(c) Exemption of certain lands.
1724. Reports to Congress.
1725. False statements, representations, or reports; penalties.
1726. Access to records.
(a) Recordkeeping requirements.
(b) Audit and examination.
(c) Audit reports; report to Congress; regulations.
(d) Withholding information.
1727. General powers of Secretary
1728. State demonstration programs.
(a) Grants; condition.
(b) Certification requirements.
(c) Restrictions.
(d) Report to Congress.
1729. Air carrier airport designation.
1730. Civil rights.

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

1741. Maximum charges for certain overtime services.
(a) Customs Service, Immigration and Naturalization Service, Public Health Service, and Department of Agriculture; services for private aircraft or vessel upon domestic arrival or departure.
(b) Free week day services of regular personnel.

Sec.
(c) Credit against expenses: deposit of collections in Treasury.
(d) Definitions.
(e) Limitation on charges for government inspection of persons and property.
1742. Airport and Airway Trust Fund.
(a) Creation.
(b) Transfer to Trust Fund of amounts equivalent to certain taxes.
(c) Transfer of unexpended funds.
(d) Appropriation of additional sums.
(e) Management; report to Congress; investment: general provision, sale of obligations, interest on certain proceeds.
(f) Expenditures from Trust Fund; airport and airway program; transfers from Trust Fund on account of certain refunds; transfers from Trust Fund on account of certain section 39 credits.
1743. Interstate compacts for airport facilities.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1354, 1509 of this title; title 40 App. sections 208, 214; title 42 section 3188a; title 50 App. section 1622.

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1742 of this title.

§ 1701. Congressional declaration of policy

The Congress hereby finds and declares—

That the Nation's airport and airway system is inadequate to meet the current and projected growth in aviation.

That substantial expansion and improvement of the airport and airway system is required to meet the demands of interstate commerce, the postal service, and the national defense.

That the annual obligational authority during the period July 1, 1970, through September 30, 1980, for the acquisition, establishment, and improvement of air navigational facilities under the Federal Aviation Act of 1958 (49 U.S.C. 1301 et seq.), should be no less than $250,000,000.

(Pub. L. 91-258, title I, § 2, May 21, 1970, 84 Stat. 219; Pub. L. 94-353, title I, § 2, July 12, 1976, 90 Stat. 871.)

REFERENCES IN TEXT

The Federal Aviation Act of 1958, referred to in text, is Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, as amended, which is classified principally to chapter 20 (§ 1301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

AMENDMENTS

1976—Pub. L. 94-353 substituted "September 30, 1980," for "June 30, 1980," and struck out proviso that the obligational authority during period July 1, 1970, through June 30, 1980, for airport assistance under this chapter should be $2,500,000,000.

SHORT TITLE OF 1976 AMENDMENT

Section 1 of Pub. L. 94-353 provided: "That this Act [which enacted sections 1346a, 1356a, 1358, 1704, and 1728 to 1730 of this title, amended sections 1344, 1371, 1432, 1701, 1711 to 1720, 1741, and 1742 of this title, and enacted provisions set out as notes under sections 1348, 1702, 1713, 1715, 1718, 1724, 1741, and 1742 of this title] may be cited as the 'Airport and Airway Development Act Amendments of 1976'."

SHORT TITLE OF 1973 AMENDMENT

Pub. L. 93-44, § 1, June 18, 1973, 87 Stat. 88, provided that: "This Act [enacting section 1513 of this title and amending sections 1711, 1712, 1714, 1716, and 1717 of this title] may be cited as the 'Airport Development Acceleration Act of 1973'."

SHORT TITLE

Section 1 of Pub. L. 91-258 provided that "This title [which enacted sections 1701 to 1703, 1711 to 1727, and 1741 of this title, amended sections 1344, 1354, 1430, 1432, and 1509 of this title, section 7a of Title 16, Conservation, section 214 of the Appendix to Title 40, Public Buildings, Property, and Works, sections 3188a and 3338 of Title 42, The Public Health and Welfare, section 1622 of the Appendix to Title 50, War and National Defense, and Reorg. Plan No. 14 of 1950, eff. May 24, 1950, 15 F.R. 3176, 64 Stat. 1267, set out in the Appendix to Title 5, Government Organization and Employees, repealed section 1101 to 1103, 1104 to 1106, and 1107a to 1120 of this title, and enacted provisions set out as notes under section 1430 of this title] may be cited as the 'Airport and Airway Development Act of 1970'."

SAVINGS PROVISIONS

Section 52(c) of Pub. L. 91-258 provided that: "All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, grants, rights, and privileges which have been issued, made, granted, or allowed to become effective by the President, the Secretary of Transportation or any court of competent jurisdiction under any provision of the Federal Airport Act, as amended [sections 1101 to 1103, 1104 to 1106, and 1107a to 1120 of this title], which are in effect at the time this section takes effect, are continued in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Secretary of Transportation or by any court of competent jurisdiction, or by operation of law."

SEPARABILITY OF PROVISIONS

Section 52(d) of Pub. L. 91-258 provided that: "If any provision of this title [see Short Title note above] or the application thereof to any person or circumstances is held invalid, the remainder of the title [see Short Title note above] and the application of the provision to other persons or circumstances is not affected thereby."

§ 1702. National transportation policy

(a) Formulation

Within one year after May 21, 1970, the Secretary of Transportation shall formulate and recommend to the Congress for approval a national transportation policy. In the formulation of such policy, the Secretary shall take into consideration, among other things—

(1) the coordinated development and improvement of all modes of transportation, together with the priority which shall be assigned to the development and improvement of each mode of transportation; and

(2) the coordination of recommendations made under this chapter relating to airport and airway development with all other recommendations to the Congress for the development and improvement of our national transportation system.

(b) Annual report

The Secretary shall submit an annual report to the Congress on the implementation of the national transportation policy formulated

under subsection (a) of this section. Such report shall include the specific actions taken by the Secretary with respect to (1) the coordination of the development and improvement of all modes of transportation, (2) the establishment of priorities with respect to the development and improvement of each mode of transportation, and (3) the coordination of recommendations under this chapter relating to airport and airway development with all other recommendations to the Congress for the development and improvement of our national transportation system.

(Pub. L. 91-258, title I, § 3, May 21, 1970, 84 Stat. 219.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2) and (b)(3), read in the original "this title", meaning title I of Pub. L. 91-258, May 21, 1970, 84 Stat. 219, which is classified principally to this chapter. For complete classification of title I of Pub. L. 91-258 to the Code, see Short Title note set out under section 1701 of this title and Tables volume.

SPECIAL STUDIES RELATING TO AIRPORTS AND ENVIRONS; CONSULTATIONS; REPORTS TO CONGRESS

Pub. L. 94-353, title I, § 26, July 12, 1976, 90 Stat. 885, provided that the Secretary of Transportation, in consultation with planning agencies, airport sponsors, other public agencies, airport users, and other interested persons or groups, conduct studies with respect to the feasibility, practicability, and cost of land bank planning and development for future and existing airports to be carried out through Federal, State, and local government action, the establishment of new major airports, including identification and evaluation of locations and investigation of alternative methods of financing land acquisition, and the feasibility, practicability, and cost of soundproofing schools, hospitals and public health facilities located near airports, and submit the results of these studies to Congress, including legislative recommendations, within 1 year from July 12, 1976.

§ 1703. Omitted

CODIFICATION

Section, Pub. L. 91-258, title I, § 4, May 21, 1970, 84 Stat. 220, which required the Secretary of Transportation to submit to Congress within two years from May 21, 1970, a cost allocation study respecting appropriate method for allocating the cost of the airport and airway system among various users, was omitted from the Code as executed.

§ 1704. Reduction of nonessential expenditures

The Secretary of Transportation shall, in accordance with this section, attempt to reduce, to the maximum extent practicable consistent with the highest degree of aviation safety, the capital, operating, maintenance, and administrative costs of the national airport and airway system. The Secretary shall, at least annually, consult with and give due consideration to the views of users of such system on methods of reducing nonessential Federal expenditures for aviation. The Secretary shall give particular attention to any recommendations which could reduce, without any adverse effects on safety, future Federal manpower requirements and costs which are required to be recouped from charges on such users.

(Pub. L. 94-353, title I, § 25, July 12, 1976, 90 Stat. 885.)

CODIFICATION

Section was not enacted as part of Pub. L. 91-258, title I, May 21, 1970, 84 Stat. 219, known as the Airport and Airway Development Act of 1970, which comprises this chapter.

SUBCHAPTER II—AIRPORT AND AIRWAY DEVELOPMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1742 of this title.

§ 1711. Definitions

As used in this subchapter—

(1) "Air carrier airport" means an existing public airport regularly served, or a new public airport which the Secretary determines will be regularly served, by an air carrier certificated by the Civil Aeronautics Board under section 1371 of this title (other than a supplemental air carrier), and a commuter service airport.

(2) "Airport" means any area of land or water which is used, or intended for use, for the landing and takeoff of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

(3) "Airport development" means (A) any work involved in constructing, improving, or repairing a public airport or portion thereof, including the removal, lowering, relocation, and marking and lighting of airport hazards, and including navigation aids used by aircraft landing at, or taking off from a public airport, and including safety equipment required by rule or regulation for certification of the airport under section 1432 of this title, and security equipment required of the sponsor by the Secretary by rule or regulation for the safety and security of persons and property on the airport, and including snow removal equipment, and including the purchase of noise suppressing equipment, the construction of physical barriers, and landscaping for the purpose of diminishing the effect of aircraft noise on any area adjacent to a public airport, (B) any acquisition of land or of any interest therein, or of any easement through or other interest in airspace, including land for future airport development, which is necessary to permit any such work or to remove or mitigate or prevent or limit the establishment of, airport hazards, and (C) any acquisition of land or of any interest therein necessary to insure that such land is used only for purposes which are compatible with the noise levels of the operation of a public airport.

(4) "Airport hazard" means any structure or object of natural growth located on or in the vicinity of a public airport, or any use of land near such airport, which obstructs the airspace required for the flight of aircraft in landing or taking off at such airport or is otherwise hazardous to such landing or taking off of aircraft.

(5) "Airport master planning" means the development for planning purposes of information and guidance to determine the extent, type, and nature of development needed at a specific airport. It may include the preparation of an airport layout plan and feasibility studies, including the potential use and development of land surrounding an actual or potential airport

site, and the conduct of such other studies, surveys, and planning actions as may be necessary to determine the short-, intermediate-, and long-range aeronautical demands required to be met by a particular airport as a part of a system of airports.

(6) "Airport system planning" means the development for planning purposes of information and guidance to determine the extent, type, nature, location, and timing of airport development needed in a specific area to establish a viable and balanced system of public airports. It includes identification of the specific aeronautical role of each airport within the system, development of estimates of systemwide development costs, and the conduct of such studies, surveys, and other planning actions as may be necessary to determine the short-, intermediate-, and long-range aeronautical demands required to be met by a particular system of airports.

(7) "Commuter service airport" means an air carrier airport which is not served by an air carrier certificated under section 1371 of this title and which is regularly served by one or more air carriers operating under exemption granted by the Civil Aeronautics Board from section 1371(a) of this title at which not less than two thousand five hundred passengers were enplaned in the aggregate by all such air carriers from such airport during the preceding calendar year.

(8) "General aviation airport" means a public airport which is not an air carrier airport.

(9) "Landing area" means that area used or intended to be used for the landing, takeoff, or surface maneuvering of aircraft.

(10) "Government aircraft" means aircraft owned and operated by the United States.

(11) "Planning agency" means any planning agency designated by the Secretary which is authorized by the laws of the State or States (including the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and Guam) or political subdivisions concerned to engage in areawide planning for the areas in which assistance under this subchapter is to be used.

(12) "Project" means a project for the accomplishment of airport development, airport master planning, or airport system planning.

(13) "Project costs" means any costs involved in accomplishing a project.

(14) "Public agency" means a State, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam or any agency of any of them; a municipality or other political subdivision; or a tax-supported organization; or an Indian tribe or pueblo.

(15) "Public airport" means any airport which is used or to be used for public purposes, under the control of a public agency, the landing area of which is publicly owned.

(16) "Reliever airport" means a general aviation airport designated by the Secretary as having the primary function of relieving congestion at an air carrier airport by diverting from such airport general aviation traffic.

(17) "Secretary" means the Secretary of Transportation.

(18) "Sponsor" means any public agency which, either individually or jointly with one or more other public agencies, submits to the Secretary, in accordance with this subchapter, an application for financial assistance.

(19) "State" means a State of the United States or the District of Columbia.

(20) "Terminal area" means that area used or intended to be used for such facilities as terminal and cargo buildings, gates, hangars, shops, and other service buildings; automobile parking, airport motels, and restaurants, and garages and automobile service facilities used in connection with the airport; and entrance and service roads used by the public within the boundaries of the airport.

(21) "United States share" means that portion of the project costs of projects for airport development approved pursuant to section 1716 of this title which is to be paid from funds made available for the purposes of this subchapter.

(Pub. L. 91-258, title I, § 11, May 21, 1970, 84 Stat. 220; Pub. L. 92-174, § 4(a), Nov. 27, 1971, 85 Stat. 492; Pub. L. 93-44, § 2, June 18, 1973, 87 Stat. 88; Pub. L. 94-353, title I, § 3, July 12, 1976, 90 Stat. 871.)

AMENDMENTS

1976—Par. (1). Pub. L. 94-353, § 3(a)(3), (b), added par. (1). Former par. (1) redesignated (2).

Par. (2). Pub. L. 94-353, § 3(b), redesignated former par. (1) as (2). Former par. (2) redesignated (3).

Par. (3). Pub. L. 94-353, § 3(a)(1), (b), redesignated former par. (2) as (3) and, as so redesignated, included in definition of "airport development" reference to snow removal and noise suppressing equipment, construction of barriers, and landscaping to diminish the effect of aircraft noise and reference to acquisition of land or interest therein to insure such land is used for purpose compatible with noise levels of operation of public airport. Former par. (3) redesignated (4).

Par. (4). Pub. L. 94-353, § 3(b), redesignated former par. (3) as (4). Former par. (4) redesignated (5).

Par. (5). Pub. L. 94-353, § 3(a)(2), (b), redesignated former par. (4) as (5) and, as so redesignated, added reference to potential use and development of land surrounding an actual or potential airport site. Former par. (5) redesignated (6).

Par. (6). Pub. L. 94-353, § 3(b), redesignated former par. (5) as (6). Former par. (6) redesignated (9).

Pars. (7), (8). Pub. L. 94-353, § 3(a)(4), (b), added pars. (7) and (8). Former pars. (7) and (8) redesignated (10) and (11), respectively.

Pars. (9) to (15). Pub. L. 94-353, § 3(b), redesignated former pars. (6) to (12) as (9) to (15), respectively. Former pars. (13) to (15) were redesignated as (17) to (19), respectively.

Par. (16). Pub. L. 94-353, § 3(a)(5), (b), added par. (16). Former par. (16) redesignated (20).

Pars. (17) to (21). Pub. L. 94-353, § 3(b), redesignated former pars. (13) to (17) as (17) to (21), respectively.

1973—Par. (2). Pub. L. 93-44 defined "airport development" to include work involved in constructing, improving, or repairing security equipment required of the sponsor by the Secretary by rule or regulation for the safety and security of persons and property on the airport.

1971—Pars. (8), (11). Pub. L. 92-174 inserted references to American Samoa and the Trust Territory of the Pacific Islands.

§ 1712. National airport system plan

(a) Formulation

The Secretary is directed to prepare and publish, within three years after May 21, 1970, and

thereafter to review and revise as necessary, a national airport system plan for the development of public airports in the United States. The plan shall set forth, for at least a ten-year period, the type and estimated cost of airport development considered by the Secretary to be necessary to provide a system of public airports adequate to anticipate and meet the needs of civil aeronautics, to meet requirements in support of the national defense as determined by the Secretary of Defense, and to meet the special needs of the postal service. The plan shall include all types of airport development eligible for Federal aid under section 1714 of this title and terminal area development considered necessary to provide for the efficient accommodation of persons and goods at public airports, and the conduct of functions in operational support of the airport. Airport development identified by the plan shall not be limited to the requirements of any classes or categories of public airports. In preparing the plan, the Secretary shall consider the needs of all segments of civil aviation. After June 30, 1975, the Secretary shall not include in the national airport system plan any airport which is not eligible for airport development grants under the next to the last sentence of section 1716(a) of this title, except that nothing in this sentence shall require the Secretary to remove from the national airport system plan any airport in such plan on June 30, 1975.

(b) Consideration of other modes of transportation

In formulating and revising the plan, the Secretary shall take into consideration, among other things, the relationship of each airport to the rest of the transportation system in the particular area, to the forecasted technological developments in aeronautics, and to developments forecasted in other modes of intercity transportation.

(c) Federal, State, and other agencies

In developing the national airport system plan, the Secretary shall to the extent feasible consult with the Civil Aeronautics Board, the United States Postal Service, the Department of the Interior regarding conservation and natural resource values, and other Federal agencies, as appropriate; with planning agencies, and airport operators; and with air carriers, aircraft manufacturers, and others in the aviation industry. The Secretary shall provide technical guidance to agencies engaged in the conduct of airport system planning and airport master planning to insure that the national airport system plan reflects the product of interstate, State, and local airport planning.

(d) Cooperation with Federal Communications Commission

The Secretary shall, to the extent possible, consult, and give consideration to the views and recommendations of the Federal Communications Commission, and shall make all reasonable efforts to cooperate with that Commission for the purpose of eliminating, preventing, or minimizing airport hazards caused by the construction or operation of any radio or television station. In carrying out this section, the Secretary may make any necessary surveys, studies, examinations, and investigations.

(e) Consultation with Department of Defense

The Department of Defense shall make military airports and airport facilities available for civil use to the extent feasible. In advising the Secretary of national defense requirements pursuant to subsection (a) of this section, the Secretary of Defense shall indicate the extent to which military airports and airport facilities will be available for civil use.

(f) Consultation concerning environmental changes

In carrying out this section, the Secretary shall consult with and consider the views and recommendations of the Secretary of the Interior, the Secretary of Health, Education, and Welfare, the Secretary of Agriculture, and the National Council on Environmental Quality. The recommendations of the Secretary of the Interior, the Secretary of Health, Education, and Welfare, the Secretary of Agriculture, and the National Council on Environmental Quality, with regard to the preservation of environmental quality, shall, to the extent that the Secretary of Transportation determines to be feasible, be incorporated in the national airport system plan.

(g) Cooperation with Federal Power Commission

The Secretary shall, to the extent possible, consult, and give consideration to the views and recommendations of the Federal Power Commission, and shall make all reasonable efforts to cooperate with that Commission for the purpose of eliminating, preventing, or minimizing airport hazards caused by the construction or operation of power facilities. In carrying out this section, the Secretary may make any necessary surveys, studies, examinations, and investigations.

(h) Omitted

(i) Revised system plan

No later than January 1, 1978, the Secretary shall consult with the Civil Aeronautics Board and with each State and airport sponsor, and, in accordance with this section, prepare and publish a revised national airport system plan for the development of public airports in the United States. Estimated costs contained in such revised plan shall be sufficiently accurate so as to be capable of being used for future year apportionments. In addition to the information required by subsection (a) of this section, the revised plan shall include an identification of the levels of public service and the uses made of each public airport in the plan, and the projected airport development which the Secretary deems necessary to fulfill the levels of service and use of such airports during the succeeding ten-year period.

(Pub. L. 91-258, title I, § 12, May 21, 1970, 84 Stat. 221; Pub. L. 92-174, § 1, Nov. 27, 1971, 85 Stat. 491; Pub. L. 93-44, § 6, June 18, 1973, 87 Stat. 90; Pub. L. 94-353, title I, §§ 4, 8(c), July 12, 1976, 90 Stat. 872, 877.)

CODIFICATION

Subsec. (h), which established an Aviation Advisory Commission, provided for its membership, duties, compensation, travel expenses, personnel, use of experts and consultants, administrative services, and assistance and cooperation from other Governmental agencies, and required the Commission to submit a final

report, with its recommendations concerning the long range needs of aviation, on facilitating other consideration of modes of transportation and cooperation with other agencies, communities, and industry groups, to the President and Congress on or before Jan. 1, 1973, and to cease to exist 60 days after such submission, was omitted from the Code as executed.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-353, § 8(c), added requirement that after June 30, 1975, the Secretary shall not include in the national airport system plan any airport which is not eligible for airport development grants under the provisions of section 1716(a) of this title relating to project applications after June 30, 1975.

Subsec. (i). Pub. L. 94-353, § 4, added subsec. (i).

1973—Subsec. (a). Pub. L. 93-44 substituted requirement that national airport system plan be published within three years after May 21, 1970, for prior two year requirement.

1971—Subsec. (h)(5). Pub. L. 92-174 substituted "January 1, 1973" for "January 1, 1972".

CHANGE OF NAME

In subsec. (c), reference to the Post Office Department deemed to be a reference to the United States Postal Service pursuant to Pub. L. 91-375, § 6(c), Aug. 12, 1970, 84 Stat. 733, set out as a note preceding section 101 of Title 39, Postal Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1716 of this title.

§ 1713. Planning grants

(a) Authorization to make grants

In order to promote the effective location and development of airports and the development of an adequate national airport system plan, the Secretary may make grants of funds to planning agencies for airport system planning, and to public agencies for airport master planning.

(b) Amount and limitation of grants

The award of grants under subsection (a) of this section is subject to the following limitations:

(1) The total funds obligated for grants under this section may not exceed $150,000,000, the amount obligated in any one fiscal year may not exceed $15,000,000.

(2) The United States share of any airport master planning grant under this section shall be that per centum for which a project for airport development at that airport would be eligible under section 1717 of this title. In the case of any airport system planning grant under this section, the United States share shall be 75 per centum.

(3) No more than 10 per centum of the funds made available under this section in any fiscal year may be allocated for projects within a single State, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam. Grants for projects encompassing an area located in two or more States shall be charged to each State in the proportion which the number of square miles the project encompasses in each State bears to the square miles encompassed by the entire project.

(c) Regulations; coordination with Secretary of Housing and Urban Development

The Secretary may prescribe such regulations as he deems necessary governing the award and administration of grants authorized by this section. The Secretary and the Secretary of Housing and Urban Development shall develop jointly procedures designed to preclude duplication of their respective planning assistance activities and to ensure that such activities are effectively coordinated.

(Pub. L. 91-258, title I, § 13, May 21, 1970, 84 Stat. 224; Pub. L. 92-174, § 4(a), Nov. 27, 1971, 85 Stat. 492; Pub. L. 94-353, title I, § 5, July 12, 1976, 90 Stat. 872.)

AMENDMENTS

1976—Subsec. (b)(1). Pub. L. 94-353, § 5(2), substituted "$150,000,000," for "$75,000,000 and".

Subsec. (b)(2). Pub. L. 94-353, § 5(3), substituted requirement that United States share of master plan grant be that per centum for which program under section 1717 of this title would be eligible and share for airport system planning grants under this section would be 75 per centum, for requirement that no grant under this section may exceed two-thirds of the costs incurred in the accomplishment of the project.

Subsec. (b)(3). Pub. L. 94-353, § 5(4), substituted "10" for "7.5".

1971—Subsec. (b)(3). Pub. L. 92-174 inserted reference to American Samoa and the Trust Territory of the Pacific Islands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1713a, 1720 of this title.

§ 1713a. Demonstration projects related to airport ground transportation services; implementation; priority

(1) The Secretary of Transportation is authorized to undertake demonstration projects related to ground transportation services to airports which he determines will assist the improvement of the Nation's airport and airway system, and consistent regional airport system plans funded pursuant to section 1713(b) of this title, by improving ground access to air carrier airport terminals. He may undertake such projects independently or by grant or contract (including working agreements with other Federal departments and agencies).

(2) In determining projects to be undertaken under this section, the Secretary of Transportation shall give priority to those projects which (A) affect airports in areas with operating regional rapid transit systems with existing facilities within reasonable proximity to such airports, (B) include connection of the airport terminal facilities to such systems, (C) are consistent with and supportive of a regional airport system plan adopted by the planning agency for the region and submitted to the Secretary, and (D) will improve access for all persons residing or working within the region to air transport, through the encouragement of an optimum balance of use of airports in the region.

(Pub. L. 94-353, title I, § 23(a), July 12, 1976, 90 Stat. 884.)

CODIFICATION

Section was not enacted as part of Pub. L. 91-258, title I, May 21, 1970, 84 Stat. 219, known as the Air-

port and Airway Development Act of 1970, which comprises this chapter.

MULTIMODAL TERMINAL BUILDING, ETC., DEMONSTRATION PROJECT AT SOUTH BEND, INDIANA; IMPLEMENTATION; AUTHORIZATION OF APPROPRIATIONS

Section 23(b) of Pub. L. 94-353 provided that:

"(1) The Secretary of Transportation is authorized to undertake a demonstration project at South Bend, Indiana, for a multimodal terminal building and facilities for the intermodal transfer of passengers and baggage between and among the interconnecting air, rail, and highway transportation routes and facilities. He may undertake such project independently or by grant or contract (including working agreements with other Federal departments and agencies).

"(2) There is authorized to be appropriated to carry out this subsection not to exceed $3,000,000."

§ 1714. Airport and airway development program

(a) General authority

In order to bring about, in conformity with the national airport system plan, the establishment of a nationwide system of public airports adequate to meet the present and future needs of civil aeronautics, the Secretary is authorized to make grants for airport development by grant agreements with sponsors in aggregate amounts not less than the following:

(1) For the purpose of developing in the several States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands, airports served by air carriers certificated by the Civil Aeronautics Board, and airports the primary purpose of which is to serve general aviation and to relieve congestion at airports having a high density of traffic serving other segments of aviation, $250,000,000 for each of the fiscal years 1971 through 1973, and $275,000,000 for each of the fiscal years 1974 and 1975.

(2) For the purpose of developing in the several States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands, airports serving segments of aviation other than air carriers certificated by the Civil Aeronautics Board, $30,000,000 for each of the fiscal years 1971 through 1973, and $35,000,000 for each of the fiscal years, 1974 and 1975.

(3) For the purpose of developing air carrier airports in the several States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands, $435,000,000 for fiscal year 1976, including the period July 1, 1976, through September 30, 1976, $440,000,000 for fiscal year 1977, $465,000,000 for fiscal year 1978, $495,000,000 for fiscal year 1979, and $525,000,000 for fiscal year 1980.

(4) For the purpose of developing general aviation airports in the several States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands, $65,000,000 for fiscal year 1976, including the period July 1, 1976, through September 30, 1976, $70,000,000 for fiscal year 1977, $75,000,000 for fiscal year 1978, $80,000,000 for fiscal year 1979, and $85,000,000 for fiscal year 1980.

(b) Obligational authority

(1) To facilitate orderly long-term planning by sponsors, the Secretary is authorized, effective on May 21, 1970, to incur obligations to make grants for airport development from funds made available under this subchapter for the fiscal year ending June 30, 1971, and the succeeding four fiscal years in a total amount not to exceed $1,460,000,000. No obligation shall be incurred under this paragraph for a period of more than three fiscal years and no such obligation shall be incurred after June 30, 1975. The Secretary shall not incur more than one obligation under this paragraph with respect to any single project for airport development. Obligations incurred under this paragraph shall not be liquidated in an aggregate amount exceeding $280,000,000 prior to June 30, 1971, an aggregate amount exceeding $560,000,000 prior to June 30, 1972, an aggregate amount exceeding $840,000,000 prior to June 30, 1973, an aggregate amount exceeding $1,150,000,000 prior to June 30, 1974, and an aggregate amount exceeding $1,460,000,000 prior to June 30, 1975.

(2) The Secretary is authorized to incur obligations to make grants for airport development from funds made available under paragraphs (3) and (4) of subsection (a) of this section, and such authority shall exist with respect to funds available for the making of grants for any fiscal year or part thereof pursuant to subsection (a) of this section immediately after such funds are apportioned pursuant to section 1715(a) of this title. No obligation shall be incurred under this paragraph after September 30, 1980. The Secretary shall not incur more than one obligation under this paragraph with respect to any single project for airport development. Notwithstanding any other provision of this chapter, no part of any of the funds authorized, or authorized to be obligated, for fiscal year 1980 at the discretion of the Secretary under paragraphs (3)(B) and (4)(C) of section 1715(a) of this title, and no part of the discretionary funds for reliever airports under such paragraph (4), shall be obligated or otherwise expended except in accordance with a statute enacted after July 12, 1976.

(c) Airway facilities

For the purpose of acquiring, establishing, and improving air navigation facilities under section 1348(b) of this title, the Secretary is authorized, within the limits established in appropriations Acts, to obligate for expenditure not less than $250,000,000 for each of the fiscal years 1971 through 1975, not less than $312,500,000 for fiscal year 1976, including the period July 1, 1976, through September 30, 1976, and not less than $250,000,000 per fiscal year for the fiscal years 1977 through 1980.

(d) Research, development, and demonstrations

The Secretary is authorized to carry out under section 312(c) of the Federal Aviation Act of 1958 [49 U.S.C. 1353(c)] such demonstration projects as he determines necessary in connection with research and development activities under such section 312(c). For research, development, and demonstration projects and activities under such section 312(c), there is authorized to be appropriated from the Trust

Fund in the amount of $109,350,000 for the fiscal year 1976, including the interim period beginning July 1, 1976, and ending September 30, 1976, $85,400,000 for the fiscal year 1977, and not less than $50,000,000 per fiscal year for fiscal years 1978 through 1980, to remain available until expended. The initial $50,000,000 of any sums appropriated to the Trust Fund pursuant to subsection (d) of section 1742 of this title shall be allocated to such research, development, and demonstration activities.

(e) Other expenses

The balance of the moneys available in the Airport and Airway Trust Fund may be appropriated for (1) costs of services provided under international agreements relating to the joint financing of air navigation services which are assessed against the United States Government, and (2) direct costs incurred by the Secretary to flight check and maintain air navigation facilities referred to in subsection (c) of this section in a safe and efficient condition. Eligible maintenance expenses are limited to costs incurred in the field and exclude the costs of engineering support and planning, direction, and evaluation activities. The amounts appropriated from the Airport and Airway Trust Fund for the purposes of clauses (1) and (2) may not exceed $250,000,000 for fiscal year 1977, $275,000,000 for fiscal year 1978, $300,000,000 for fiscal year 1979, and $325,000,000 for fiscal year 1980. The amounts appropriated in any fiscal year under this subsection may not exceed, when added to the minimum amounts authorized for that year under subsections (a), (c), and (d) of this section, the amounts transferred to the Airport and Airway Trust Fund for that year under section 1742(b) of this title. No part of the amount appropriated from the Airport and Airway Trust Fund in any fiscal year for obligation or expenditure under clause (2) of this subsection shall be obligated or expended which exceeds that amount which bears the same ratio to the maximum amount which may be appropriated under clauses (1) and (2) of this subsection for such fiscal year as the total amount obligated in that fiscal year under paragraphs (3) and (4) of subsection (a) of this section bears to the aggregate of the minimum amount made available for obligation under each such paragraph for such fiscal year.

(f) Preservation of funds and priority for airport and airway programs

(1) Notwithstanding any other provision of law to the contrary, no amounts may be appropriated from the trust fund to carry out any program or activity under the Federal Aviation Act of 1958 [49 U.S.C. 1301 et seq.], except programs or activities referred to in this section.

(2) Amounts equal to the minimum amounts authorized for each fiscal year by subsections (a), (c), (d) and the third sentence of subsection (e) of this section shall remain available in the trust fund until appropriated for the purposes described in such subsections.

(3) No amounts transferred to the trust fund by subsection (b) of section 1742 of this title (relating to aviation user taxes) may be appropriated for any fiscal year to carry out administrative expenses of the Department of Transportation or of any unit thereof except to the extent authorized by subsection (e) of this section.

(Pub. L. 91-258, title I, § 14, May 21, 1970, 84 Stat. 224; Pub. L. 92-174, §§ 2, 3, 4(b), Nov. 27, 1971, 85 Stat. 491, 492; Pub. L. 93-44, § 3, June 18, 1973, 87 Stat. 89; Pub. L. 94-353, title I, § 6, title II, § 201, July 12, 1976, 90 Stat. 872, 886.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(2), read in the original "this title", meaning title I of Pub. L. 91-258, May 21, 1970, 84 Stat. 219, which is classified principally to this chapter. For complete classification of title I of Pub. L. 91-258 to the Code, see Short Title note set out under section 1701 of this title and Tables volume.

The trust fund, referred to in subsec. (d), refers to the Airport and Airway Trust Fund established by section 1742 of this title.

The Federal Aviation Act of 1958, referred to in subsec. (f)(1), is Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, as amended, which is classified principally to chapter 20 (§ 1301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-353, § 6(a), added pars. (3) and (4).

Subsec. (b)(1). Pub. L. 94-353, § 6(b)(1), designated existing provisions as subsec. (b)(1) and, as so designated, substituted "paragraph" for "subsection" wherever appearing therein.

Subsec. (b)(2). Pub. L. 94-353, § 6(b)(2), added subsec. (b)(2).

Subsec. (c). Pub. L. 94-353, § 6(c), added provisions authorizing Secretary to obligate for expenditures not less than $312,500,000 for fiscal year 1976, including the period July 1, 1976, through September 30, 1976, and not less than $250,000,000 per fiscal year for the fiscal years 1977 through 1980.

Subsec. (d). Pub. L. 94-353, § 201, substituted provisions authorizing Secretary to carry out demonstration projects in connection with research and development activities under section 1353(c) of this title, for provisions relating to the allocation of the balance of the moneys available in the trust fund for the necessary expenses incident to the administration of programs funded under subsections (a), (b), and (c) of this section and for research and development under section 1353(c) of this title.

Subsec. (e). Pub. L. 94-353, § 6(d), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 94-353, § 6(d), (e), (f), (g), redesignated former subsec. (e) as (f), and as so redesignated, substituted in par. (1) "this section" for "subsections (c) and (d) of this section, as amended", in par. (2) "subsections (a), (c), (d) and the third sentence of subsection (e)" for "subsections (a) and (c)" and in par. (3) "subsection (e) of this section." for "subsection (d) of this section.".

1973—Subsec. (a)(1). Pub. L. 93-44, § 3(a)(1), increased authorization of appropriations for fiscal years 1974 and 1975 from $250,000,000 to $275,000,000.

Subsec. (a)(2). Pub. L. 93-44, § 3(a)(2), increased authorization of appropriations for fiscal years 1974 and 1975 from $30,000,000 to $35,000,000.

Subsec. (b). Pub. L. 93-44, § 3(b), substituted $1,460,000,000" for "$840,000,000" in first sentence, substituted "be incurred after" for "extend beyond" in second sentence, and limited (in last sentence) liquidation of obligations in an aggregate amount not exceeding $1,150,000,000 prior to June 30, 1974, and $1,460,000,000 prior to June 30, 1975.

1971—Subsec. (a). Pub. L. 92-174, § 4(b), added references to American Samoa and the Trust Territory of the Pacific Islands.

Subsec. (d). Pub. L. 92-174, § 2, substituted reference to moneys covering administrative expenses incident

to the administration of programs for which funds are to be allocated as set forth in subsection (c) of this section, for reference to moneys covering the maintenance and operation of air navigation facilities and the conduct of other functions under section 1348(b) of this title not otherwise provided for in subsection (c) of this section.

Subsec. (e). Pub. L. 92-174, § 3, added subsec. (e).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1712, 1715 of this title.

§ 1715. Distribution of funds; State apportionment

(a) Apportionment of funds; discretionary fund addition from unexpended amounts; passengers enplaned

(1) As soon as possible after July 1 of each fiscal year for which any amount is authorized to be obligated for the purposes of paragraph (1) of section 1714(a) of this title, the amount made available for that year shall be apportioned by the Secretary as follows:

(A) One-third to be distributed as follows:

(i) 97 per centum of such one-third for the several States, one-half in the proportion which the population of each State bears to the total population of all the States, and one-half in the proportion which the area of each State bears to the total area of all the States.

(ii) 3 per centum of such one-third for Hawaii, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, to be distributed in shares of 35 per centum, 35 per centum, 15 per centum, and 15 per centum, respectively.

(B) One-third to be distributed to sponsors of airports served by air carriers certificated by the Civil Aeronautics Board in the same ratio as the number of passengers enplaned at each airport of the sponsor bears to the total number of passengers enplaned at all such airports.

(C) One-third to be distributed at the discretion of the Secretary.

(2) As soon as possible after July 1 of each fiscal year for which any amount is authorized to be obligated for the purposes of paragraph (2) of section 1714(a) of this title, the amount made available for that year shall be apportioned by the Secretary as follows:

(A) Seventy-three and one-half per centum for the several States, one-half in the proportion which the population of each State bears to the total population of all the States, and one-half in the proportion which the area of each State bears to the total area of all the States.

(B) One and one-half per centum for Hawaii, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, to be distributed in shares of 35 per centum, 35 per centum, 15 per centum, and 15 per centum, respectively.

(C) Twenty-five per centum to be distributed at the discretion of the Secretary.

(3) As soon as possible after July 12, 1976, for fiscal year 1976, including the period July 1, 1976, through September 30, 1976, and on the first day of each fiscal year which begins on or after October 1, 1976, for which any amount is authorized to be obligated for the purposes of paragraph (3) of section 1714(a) of this title, the amount made available for that year shall be apportioned by the Secretary as follows:

(A) To each sponsor of an air carrier airport (other than a commuter service airport) as follows:

(i) $6.00 for each of the first fifty thousand passengers enplaned at that airport.

(ii) $4.00 for each of the next fifty thousand passengers enplaned at that airport.

(iii) $2.00 for each of the next four hundred thousand passengers enplaned at that airport.

(iv) $0.50 for each passenger enplaned at that airport over five hundred thousand.

No air carrier airport (other than a commuter service airport)—

(I) served by air carrier aircraft heavier than 12,500 pounds maximum certificated gross takeoff weight, or previously served, on or after September 30, 1968, by air carrier aircraft heavier than 12,500 pounds maximum certificated gross takeoff weight and presently served by air carrier aircraft 12,500 pounds or less maximum certificated gross takeoff weight, shall receive under this subparagraph less than $187,500 or more than $12,500,000 for fiscal year 1976, including the period July 1, 1976 through September 30, 1976, and less than $150,000 or more than $10,000,000 per fiscal year for fiscal years 1977 through 1980; and

(II) served by air carrier aircraft 12,500 pounds or less maximum certificated gross takeoff weight which, since September 29, 1968, has never been regularly served by air carrier aircraft heavier than 12,500 pounds maximum certificated gross takeoff weight shall receive under this subparagraph less than $62,500 or more than $12,500,000 for fiscal year 1976, including the period July 1, 1976, through September 30, 1976, and less than $50,000 or more than $10,000,000 per fiscal year for fiscal years 1977 through 1980.

In no event shall the total amount of all apportionments under this subparagraph (A) for any fiscal year exceed two-thirds of the amount authorized to be obligated for the purposes of paragraph (3) of section 1714(a) of this title for such fiscal year. In any case in which an apportionment would be reduced by the preceding sentence, the Secretary shall for such fiscal year reduce the apportionment to each sponsor of an air carrier airport proportionately so that such two-thirds amount is achieved.

(B) Any amount not apportioned under subparagraph (A) of this paragraph shall be distributed at the discretion of the Secretary as follows:

(i) $18,750,000 for fiscal year 1976, including the period July 1, 1976, through September 30, 1976, and $15,000,000 per fiscal year for the fiscal years 1977 through 1980, to commuter service airports.

(ii) The remainder of such amount to air carrier airports.

(4) As soon as possible after July 12, 1976, for fiscal year 1976, including the period July 1,

1976, through September 30, 1976, and on the first day of each fiscal year which begins on or after October 1, 1976, for which any amount is authorized to be obligated for the purposes of paragraph (4) of section 1714(a) of this title, the amount made available minus $18,750,000 in the case of fiscal year 1976, including such period, and minus $15,000,000 in the case of each of the fiscal years 1977 through 1980, shall be apportioned by the Secretary as follows:

(A) 75 per centum for the several States, one-half in the proportion which the population of each State bears to the total population of all the States, and one-half in the proportion which the area of each State bears to the total area of all the States.

(B) 1 per centum for the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands to be distributed at the discretion of the Secretary.

(C) 24 per centum to be distributed at the discretion of the Secretary to general aviation airports.

$18,750,000 of the amount made available for fiscal year 1976, including such period, and $15,000,000 of the amount made available for each of the other fiscal years shall be distributed at the discretion of the Secretary to reliever airports.

(5) Each amount apportioned to a State under paragraph (1)(A)(i) or (2)(A) or (4)(A) of this subsection shall, during the fiscal year for which it was first authorized to be obligated and the fiscal year immediately following, be available only for approved airport development projects located in that State, or sponsored by that State or some public agency thereof but located in an adjoining State. Each amount apportioned to a sponsor of an airport under paragraph (1)(B) or (3)(A) of this subsection shall, during the fiscal year for which it was first authorized to be obligated and the two fiscal years immediately following, be available only for approved airport development projects located at airports sponsored by it. Any amount apportioned as described in this paragraph which has not been obligated by grant agreement at the expiration of the period of time for which it was so apportioned shall be added to the discretionary fund established by subsection (b) of this section. For purposes of this paragraph funds apportioned pursuant to this section for fiscal year 1976, including the period July 1, 1976, through September 30, 1976, shall be available for obligation for the same period of time as if such funds were apportioned for fiscal year 1976 exclusive of such period.

(6) For the purposes of this section, the term "passengers enplaned" shall include United States domestic, territorial, and international revenue passenger enplanements in scheduled and nonscheduled service of air carriers and foreign air carriers in intrastate and interstate commerce as shall be determined by the Secretary pursuant to such regulations as he shall prescribe.

(b) Discretionary fund; creation and uses

(1) The amounts authorized by subsection (a) of this section to be distributed at the discretion of the Secretary shall constitute a discretionary fund.

(2) The discretionary fund shall be available for such approved projects for airport development in the several States, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and Guam as the Secretary considers most appropriate for carrying out the national airport system plan regardless of the location of the projects. In determining the projects for which the fund is to be used, the Secretary shall consider the existing airport facilities in the several States, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam, and the need for or lack of development of airport facilities in the several States, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam. Amounts placed in the discretionary fund pursuant to subsection (a) of this section, including amounts added to the discretionary fund pursuant to paragraph (5) of such subsection (a), may be used only in accordance with the purposes for which originally appropriated.

(c) Notice of apportionment; definitions

The Secretary shall inform each air carrier airport sponsor and the Governor of each State, or the chief executive officer of the equivalent jurisdiction, as the case may be, on April 1 of each year of the estimated amount of the apportionment to be made on October 1 of that year. As used in this section, the term "population" means the population according to the latest decennial census of the United States and the term "area" includes both land and water.

(Pub. L. 91-258, title I, § 15, May 21, 1970, 84 Stat. 225; Pub. L. 92-174, § 4(a), Nov. 27, 1971, 85 Stat. 492; Pub. L. 94-353, title I, § 7(a)-(d), July 12, 1976, 90 Stat. 874-876.)

AMENDMENTS

1976—Subsec. (a)(3), (4). Pub. L. 94-353, § 7(a), added subsec. (a)(3) and (4). Former subsec. (a)(3) and (4) were redesignated as (5) and (6), respectively.

Subsec. (a)(5). Pub. L. 94-353, § 7(a), (b), redesignated former subsec. (a)(3) as (a)(5), and as so redesignated, inserted "or (4)(A)" after "(2)(A)" and "or (3)(A)" after "(1)(B)" and added requirement that funds apportioned for fiscal year 1976, including period July 1, 1976, through September 30, 1976, shall be available for obligation for same period of time as if such funds were apportioned for fiscal year 1976 exclusive of such period.

Subsec. (a)(6). Pub. L. 94-353, § 7(a), redesignated former subsec. (a)(4) as (a)(6).

Subsec. (b)(2). Pub. L. 94-353, § 7(c), substituted "(5)" for "(3)".

Subsec. (c). Pub. L. 94-353, § 7(d), substituted provisions requiring Secretary to give notice of apportionment of funds to each air carrier airport sponsor and the Governor of each state, or equivalent chief executive officer, by April 1 of each year, for provisions requiring Secretary to give notice of apportionment of funds to executive heads of each state and any public agency requesting such information.

1971—Subsec. (b)(2). Pub. L. 92-174 inserted reference to American Samoa and the Trust Territory of the Pacific Islands.

INCREASE IN ENPLANEMENTS FOR FISCAL YEAR 1976

Section 7(e) of Pub. L. 94-353 provided that in making apportionment under subsec. (a)(3)(A) of this section for the fiscal year 1976, including the period July 1, 1976 through Sept. 30, 1976, the Secretary of

Transportation was to increase the number of enplanements at each airport by 25 percent.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1714, 1717, 1719, 1720, 1728 of this title.

§ 1716. Project applications for airport development

(a) Submission

Subject to the provisions of subsection (b) of this section, any public agency, or two or more public agencies acting jointly, may submit to the Secretary a project application for one or more projects, in a form and containing such information, as the Secretary may prescribe, setting forth the airport development proposed to be undertaken. Until July 1, 1975, no project application shall propose airport development other than that included in the then current revision of the national airport system plan formulated by the Secretary under this subchapter, and all proposed development shall be in accordance with standards established by the Secretary, including standards for site location, airport layout, grading, drainage, seeding, paving, lighting, and safety of approaches. After June 30, 1975, no project application shall propose airport development except in connection with the following airports included in the current revision of the national airport system plan formulated by the Secretary under section 1712 of this title: (1) air carrier airports, (2) commuter service airports, (3) reliever airports, and (4) general aviation airports (A) which are regularly served by aircraft transporting United States mail, or (B) which are regularly used by aircraft of a unit of the Air National Guard or of a Reserve component of the Armed Forces of the United States, or (C) which the Secretary determines have a significant national interest. Except as provided in subsection (g) of this section, all proposed development shall be in accordance with standards established by the Secretary, including standards for site location, airport layout, grading, drainage, seeding, paving, lighting, and safety of approaches.

(b) Public agencies subject to State law

Nothing in this subchapter shall authorize the submission of a project application by any municipality or other public agency which is subject to the law of any State if the submission of the project application by the municipality or other public agency is prohibited by the law of that State.

(c) Approval

(1) All airport development projects shall be subject to the approval of the Secretary, which approval may be given only if he is satisfied that—

(A) the project is reasonably consistent with plans (existing at the time of approval of the project) of planning agencies for the development of the area in which the airport is located and will contribute to the accomplishment of the purposes of this subchapter;

(B) sufficient funds are available for that portion of the project costs which are not to be paid by the United States under this subchapter;

(C) the project will be completed without undue delay;

(D) the public agency or public agencies which submitted the project application have legal authority to engage in the airport development as proposed; and

(E) all project sponsorship requirements prescribed by or under the authority of this subchapter have been or will be met.

No airport development project may be approved by the Secretary with respect to any airport unless a public agency or the United States or an agency thereof holds good title, satisfactory to the Secretary, to the landing area of the airport or the site therefor, or gives assurance satisfactory to the Secretary that good title will be acquired.

(2) No airport development project may be approved by the Secretary which does not include provision for installation of the landing aids specified in subsection (d) of section 1717 of this title and determined by him to be required for the safe and efficient use of the airport by aircraft taking into account the category of the airport and the type and volume of traffic utilizing the airport.

(3) No airport development project may be approved by the Secretary unless he is satisfied that fair consideration has been given to the interest of communities in or near which the project may be located.

(4) It is declared to be national policy that airport development projects authorized pursuant to this subchapter shall provide for the protection and enhancement of the natural resources and the quality of environment of the Nation. In implementing this policy, the Secretary shall consult with the Secretaries of the Interior and Health, Education, and Welfare with regard to the effect that any project involving airport location, a major runway extension, or runway location may have on natural resources including, but not limited to, fish and wildlife, natural, scenic, and recreation assets, water and air quality, and other factors affecting the environment, and shall authorize no such project found to have adverse effect unless the Secretary shall render a finding, in writing, following a full and complete review, which shall be a matter of public record, that no feasible and prudent alternative exists and that all possible steps have been taken to minimize such adverse effect.

(d) Hearings

(1) No airport development project involving the location of an airport, an airport runway, or a runway extension may be approved by the Secretary unless the public agency sponsoring the project certifies to the Secretary that there has been afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport location and its consistency with the goals and objectives of such urban planning as has been carried out by the community.

(2) When hearings are held under paragraph (1) of this subsection, the project sponsor shall, when requested by the Secretary, submit a copy of the transcript to the Secretary.

(e) Air and water quality

(1) The Secretary shall not approve any project application for a project involving airport location, a major runway extension, or runway

location unless the Governor of the State in which such project may be located certifies in writing to the Secretary that there is reasonable assurance that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. In any case where such standards have not been approved or where such standards have been promulgated by the Secretary of the Interior or the Secretary of Health, Education, and Welfare, certification shall be obtained from the appropriate Secretary. Notice of certification or of refusal to certify shall be provided within sixty days after the project application is received by the Secretary.

(2) The Secretary shall condition approval of any such project application on compliance during construction and operation with applicable air and water quality standards.

(f) Airport site selection; metropolitan area

(1) Whenever the Secretary determines (A) that a metropolitan area comprised of more than one unit of State or local government is in need of an additional airport to adequately meet the air transportation needs of such area, and (B) that an additional airport for such area is consistent with the national airport system plan prepared by the Secretary, he shall notify, in writing, the governing authorities of the area concerned of the need for such additional airport and request such authorities to confer, agree upon a site for the location of such additional airport, and notify the Secretary of their selection. In order to facilitate the selection of a site for an additional airport under the preceding sentence, the Secretary shall exercise such of his authority under this subchapter as he may deem appropriate to carry out the provisions of this paragraph. For the purposes of this subsection, the term "metropolitan area" means a standard metropolitan statistical area as established by the Office of Management and Budget, subject however to such modifications and extensions as the Secretary may determine to be appropriate for the purposes of this subsection.

(2) In the case of a proposed new airport serving any area, which does not include a metropolitan area, the Secretary shall not approve any airport development project with respect to any proposed airport site not approved by the community or communities in which the airport is proposed to be located.

(g) State standards; authorization of appropriations

(1) The Secretary is authorized to make grants to any State, upon application therefor, for not to exceed 75 per centum of the cost of developing standards for airport development at general aviation airports in such State, other than standards for safety of approaches. The aggregate of all grants made to any State under this paragraph shall not exceed $25,000.

(2) The Secretary is authorized to approve standards established by a State for airport development at general aviation airports in such State, other than standards for safety of approaches, and upon such approval such State standards shall be the standards applicable to such general aviation airports in lieu of any comparable standard established under subsection (a) of this section. State standards approved under this subsection may be revised, from time to time, as the State or the Secretary determines necessary, subject to approval of such revisions by the Secretary.

(3) There is authorized to be appropriated out of the Airport and Airway Trust Fund not to exceed $1,275,000 to carry out this subsection.

(h) Acceptance by Secretary of certification from sponsor or planning agency; requirements

The Secretary is authorized in connection with any project to accept a certification from a sponsor or a planning agency that such sponsor or agency will comply with all of the statutory and administrative requirements imposed on such sponsor or agency under this chapter in connection with such project. Acceptance by the Secretary of a certification from a sponsor or agency may be rescinded by the Secretary at any time if, in his opinion, it is necessary to do so. Nothing in this subsection shall affect or discharge any responsibility or obligation of the Secretary under any other Federal law, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), section 4(f) of the Department of Transportation Act [49 U.S.C. 1653(f)], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d], title VIII of the Act of April 11, 1968 (42 U.S.C. 3601 et seq.), and the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

(Pub. L. 91-258, title I, § 16, May 21, 1970, 84 Stat. 226; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; Pub. L. 93-44, § 4, June 18, 1973, 87 Stat. 89; Pub. L. 94-353, title I, § 8(a), (b), July 12, 1976, 90 Stat. 876.)

References in Text

This chapter, referred to in subsec. (h), read in the original "this Act" meaning the Airport and Airway Development Act of 1970, meaning title I of Pub. L. 91-258, May 21, 1970, 84 Stat. 219, which is classified principally to this chapter. For complete classification of title I of Pub. L. 91-258 to the Code, see Short Title note set out under section 1701 of this title and Tables volume.

The National Environmental Policy Act of 1969, referred to in subsec. (h), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables volume.

The Civil Rights Act of 1964, referred to in subsec. (h), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables volume.

Title VIII of the Act of April 11, 1968 [Pub. L. 90-284], referred to in subsec. (h), is classified generally to subchapter I (§ 3601 et seq.) of chapter 45 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Tables volume.

The Uniform Relocation Assistance and Land Acquisition Policies Act of 1970, referred to in subsec. (h), probably means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which is act Jan. 2, 1971, Pub. L. 91-646, 84 Stat. 1894, as amended, and which is classified principally to chapter 61 (§ 4601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of Title 42 and Tables volume.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-353, § 8(a), inserted "for one or more projects" after "project application", substituted "Until July 1, 1975, no" for "No", and added provisions requiring that after June 30, 1975, no project application shall propose airport development except in connection with airports included in the current revision of the national airport plan formulated by the Secretary and all proposed development shall be in accordance with standards established by the Secretary.

Subsecs. (g), (h). Pub. L. 94-353, § 8(b), added subsecs. (g) and (h).

1973—Subsec. (c)(1). Pub. L. 93-44 conditioned approval of airport development project on existence of a good title held by the United States or an agency thereof.

TRANSFER OF FUNCTIONS

All functions vested by law (including reorganization plan) in the Bureau of the Budget or the Director of the Bureau of the Budget were transferred to the President of the United States by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of Reorg. Plan No. 2 of 1970 redesignated the Bureau of the Budget as the Office of Management and Budget.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1711, 1712, 1717, 1722 of this title.

§ 1717. United States share of project costs

(a) General provision

Except as otherwise provided in this section, the United States share of allowable project costs payable on account of any approved airport development project submitted under section 1716 of this title—

(1) may not exceed 50 per centum of the allowable project costs in the case of grants made from funds for fiscal years 1971, 1972, and 1973, and may not exceed 50 per centum for sponsors whose airports enplane not less than 1 per centum of the total annual passengers enplaned by air carriers certificated by the Civil Aeronautics Board, and may not exceed 75 per centum for sponsors whose airports enplane less than 1 per centum of the total annual passengers enplaned by air carriers certificated by the Civil Aeronautics Board and for sponsors of general aviation or reliever airports, in the case of grants made from funds for fiscal years 1974 and 1975; and

(2)(A) shall be 90 per centum of the allowable project costs in the case of grants from funds for fiscal year 1976, including the period July 1, 1976, through September 30, 1976, and for fiscal years 1977 and 1978, and shall be 80 per centum of the allowable project costs in the case of grants from funds for fiscal years 1979 and 1980, (i) for each air carrier airport (other than a commuter service airport) which enplanes less than one-quarter of 1 per centum of the total annual passengers enplaned as determined for purposes of making the latest annual apportionment under section 1715(a)(3) of this title, (ii) for each commuter service airport, and (iii) for each general aviation airport; and

(B) shall be 75 per centum of the allowable project costs in the case of all other airports.

(b) Projects in public land States

In the case of any State containing unappropriated and unreserved public lands and nontaxable Indian lands (individual and tribal) exceeding 5 per centum of the total area of all lands therein, the United States share under subsection (a) of this section shall be increased by whichever is the smaller of the following percentages thereof: (1) 25 per centum, or (2) a percentage equal to one-half of the percentage that the area of all such lands in that State is of its total area. In no event shall such United States share, as increased by this subsection, exceed the greater of (1) the percentage share determined under subsection (a) of this section, or (2) the percentage share applying on June 30, 1975, as determined under this subsection.

(c) Projects in Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands

For fiscal years 1971 through 1975, the United States share payable on account of any approved project for airport development in the Virgin Islands, American Samoa, or the Trust Territory of the Pacific Islands shall be any portion of the allowable project costs of the project, not to exceed 75 per centum, as the Secretary considers appropriate for carrying out the provisions of this subchapter.

(d) Landing aids; cost limitation

To the extent that the project costs of an approved project for airport development represent the cost of (1) land required for the installation of approach light systems, (2) touchdown zone and centerline runway lighting, or (3) high intensity runway lighting, the United States share shall be the same percentage as is otherwise applicable to such project.

(Pub. L. 91-258, title I, § 17, May 21, 1970, 84 Stat. 228; Pub. L. 92-174, § 4(c), Nov. 27, 1971, 85 Stat. 492; Pub. L. 93-44, § 5, June 18, 1973, 87 Stat. 89; Pub. L. 94-353, title I, § 9, July 12, 1976, 90 Stat. 877.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-353, § 9(a), restructured existing pars. (1) and (2) as par. (1) and, as so restructured, added provisions relating to funds for fiscal years 1971 to 1973 and funds for fiscal years 1974 and 1975, and added par. (2).

Subsec. (b). Pub. L. 94-353, § 9(b), added requirement that in no event shall United States share exceed the greater of the percentage share determined under subsec. (a) or the percentage share applying on June 30, 1975, as determined under this subsection.

Subsec. (c). Pub. L. 94-353, § 9(c), substituted "For fiscal years 1971 through 1975, the" for "The".

Subsec. (d). Pub. L. 94-353, § 9(d), substituted "shall be the same percentage as is otherwise applicable to such project." for "shall be not to exceed 82 per centum of the allowable costs thereof.".

Subsec. (e). Pub. L. 94-353, § 9(e), struck out subsec. (e) requiring that to the extent project cost of an airport development project represents safety equipment or security equipment required by rule or regulation, United States share may not exceed 82 per centum of the allowable cost thereof.

1973—Subsec. (a). Pub. L. 93-44, § 5(1) substituted "share of allowable project costs payable" for "share payable", added cls. (1) and (2), and deleted former provision limiting United States share to 50 per centum of the allowable project costs.

Subsec. (e). Pub. L. 93-44, § 5(2), added subsec. (e).

1971—Subsec. (c). Pub. L. 92-174 inserted reference to American Samoa and the Trust Territory of the Pacific Islands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1713, 1716, 1720 of this title.

§ 1718. Project sponsorship requirements; compliance; contracts between Secretary and public agencies; air traffic control activities; relief of sponsors; consultation

(a) As a condition precedent to his approval of an airport development project under this subchapter, the Secretary shall receive assurances in writing, satisfactory to him, that—

(1) Public use; requirements

the airport to which the project for airport development relates will be available for public use on fair and reasonable terms and without unjust discrimination, including the requirement that (A) each air carrier, authorized to engage directly in air transportation pursuant to section 1371 or 1372 of this title, using such airport shall be subject to nondiscriminatory and substantially comparable rates, fees, rentals, and other charges and nondiscriminatory and substantially comparable rules, regulations, and conditions as are applicable to all such air carriers which make similar use of such airport and which utilize similar facilities, subject to reasonable classifications such as tenants or nontenants, and combined passenger and cargo flights or all cargo flights, and such classification or status as tenant shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on tenant air carriers, and (B) each fixed-based operator using a general aviation airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport utilizing the same or similar facilities;

(2) Maintenance and operation

the airport and all facilities thereon or connected therewith will be suitably operated and maintained, with due regard to climatic and flood conditions;

(3) Airport hazards

the aerial approaches to the airport will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards;

(4) Compatible use of adjacent land

appropriate action, including the adoption of zoning laws, has been or will be taken, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft;

(5) Government use; charge

all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft will be available to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, a charge may be made for a reasonable share, proportional to such use, of the cost of operating and maintaining the facilities used;

(6) Air traffic control activities

the airport operator or owner will furnish without cost to the Federal Government for use in connection with any air traffic control activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction at Federal expense of space or facilities for such purposes;

(7) Accounting

all project accounts and records will be kept in accordance with a standard system of accounting prescribed by the Secretary after consultation with appropriate public agencies;

(8) Self-sustaining fee and rental structure

the airport operator or owner will maintain a fee and rental structure for the facilities and services being provided the airport users which will make the airport as self-sustaining as possible under the circumstances existing at that particular airport, taking into account such factors as the volume of traffic and economy of collection, except that no part of the Federal share of an airport development project for which a grant is made under this chapter or under the Federal Airport Act (49 U.S.C. 1101 et seq.) shall be included in the rate base in establishing fees, rates, and charges for users of that airport;

(9) Reports

the airport operator or owner will submit to the Secretary such annual or special airport financial and operations reports as the Secretary may reasonably request; and

(10) Inspection of records

the airport and all airport records will be available for inspection by any duly authorized agent of the Secretary upon reasonable request.

To insure compliance with this section, the Secretary shall prescribe such project sponsorship requirements, consistent with the terms of this subchapter, as he considers necessary. Among other steps to insure such compliance the Secretary is authorized to enter into contracts with public agencies, on behalf of the United States. Whenever the Secretary obtains from a sponsor any area of land or water, or estate therein, or rights in buildings of the sponsor and constructs space or facilities thereon at Federal expense, he is authorized to relieve the sponsor from any contractual obligation entered into under this subchapter or the Federal Airport Act to provide free space in airport buildings to the Federal Government to the extent he finds that space no longer required for the purposes set forth in paragraph (6) of this subsection.

(b) In making a decision to undertake any project under this chapter, any sponsor of an air carrier airport shall consult with air carriers using the airport at which such airport develop-

ment project is proposed and any sponsor of a general aviation airport shall consult with fixed-base operators using the airport at which such airport development project is proposed.

(Pub. L. 91-258, title I, § 18, May 21, 1970, 84 Stat. 229; Pub. L. 94-353, title I, § 10(a)–(c), July 12, 1976, 90 Stat. 878.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(8), (b), read in the original "this title", meaning title I of Pub. L. 91-258, May 21, 1970, 84 Stat. 219, which is classified principally to this chapter. For complete classification of title I of Pub. L. 91-258 to the Code, see Short Title note set out under section 1701 of this title and Tables volume.

The Federal Airport Act, referred to in subsec. (a)(8) and subsec. (a), closing sentence, is act May 13, 1946, ch. 251, 60 Stat. 170, as amended, which was classified to chapter 14 (§ 1101 et seq.) of this title. The Act was repealed by section 52(a) of the Airport and Airway Development Act of 1970 (Pub. L. 91-258, title I, May 21, 1970, 84 Stat. 235), and is now covered by this chapter.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-353, § 10(a), (b), (c), designated existing provisions as subsec. (a), and as so designated, added in par. (1) provisions requiring air carriers and fixed-based operators to be subject to nondiscriminatory comparable rates, fees, rentals, and charges, and air carriers additionally to be subject to nondiscriminatory comparable rules, regulations, and conditions, in par. (8), requirement that no part of federal share of an airport development project shall be included in establishing fees, rates, and charges for users of airport, and substituted in material following par. (10) "subsection." for "section.".

Subsec. (b). Pub. L. 94-353, § 10(a), added subsec. (b).

AIRPORT LEASE AND OTHER CONTRACT REFORMATION REQUIREMENT

Section 10(d) of Pub. L. 94-353 provided that: "The amendment made to section 18(a)(1)(A) of the Airport and Airway Development Act of 1970 (as amended by subsection (c) of this section [amending subsec. (a)(1)(A) of this section]) shall not require the reformation of any lease or other contract entered into by an airport before the date of enactment of this Act [July 12, 1976]. The amendment made to section 18(a)(1)(B) of the Airport and Airway Development Act of 1970 (as amended by subsection (c) of this section [amending subsec. (a)(1)(B) of this section]) shall not require the reformation of any lease or other contract entered into by an airport before July 1, 1975."

§ 1719. Grant agreements; offer of terms and conditions; acceptance

Upon approving a project application for airport development, the Secretary, on behalf of the United States, shall transmit to the sponsor or sponsors of the project application an offer to make a grant for the United States share of allowable project costs. An offer shall be made upon such terms and conditions as the Secretary considers necessary to meet the requirements of this subchapter and the regulations prescribed thereunder. Each offer shall state a definite amount as the maximum obligation of the United States payable from funds authorized by this subchapter, and shall stipulate the obligations to be assumed by the sponsor or sponsors. In any case where the Secretary approves an application for a project which will not be completed in one fiscal year, the offer shall, upon request of the sponsor, provide for the obligation of funds apportioned or to be apportioned to the sponsor pursuant to section 1715(a)(3)(A) of this title for such fiscal years (including future fiscal years) as may be necessary to pay the United States share of the cost of such project. If and when an offer is accepted in writing by the sponsor, the offer and acceptance shall comprise an agreement constituting an obligation of the United States and of the sponsor. Thereafter, the amount stated in the accepted offer as the maximum obligation of the United States may not be increased by more than 10 per centum. Unless and until an agreement has been executed, the United States may not pay, nor be obligated to pay, any portion of the costs which have been or may be incurred.

(Pub. L. 91-258, title I, § 19, May 21, 1970, 84 Stat. 230; Pub. L. 94-353, title I, § 11, July 12, 1976, 90 Stat. 879.)

AMENDMENTS

1976—Pub. L. 94-353 added provisions relating to approval of application by Secretary for a project not to be completed in one fiscal year.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 sections 3338, 4519.

§ 1720. Project costs

(a) Allowable project costs; regulations

Except as provided in section 1721 of this title, the United States may not pay, or be obligated to pay, from amounts appropriated to carry out the provisions of this subchapter, any portion of a project cost incurred in carrying out a project for airport development unless the Secretary has first determined that the cost is allowable. A project cost is allowable if—

(1) it was a necessary cost incurred in accomplishing airport development in conformity with approved plans and specifications for an approved airport development project and with the terms and conditions of the grant agreement entered into in connection with the project;

(2) it was incurred subsequent to the execution of the grant agreement with respect to the project, and in connection with airport development accomplished under the project after the execution of the agreement. However, the allowable costs of a project may include any necessary costs of formulating the project (including the costs of field surveys and the preparation of plans and specifications, the acquisition of land or interests therein or easements through or other interests in airspace, and any necessary administrative or other incidental costs incurred by the sponsor specifically in connection with the accomplishment of the project for airport development, which would not have been incurred otherwise) which were incurred subsequent to May 13, 1946;

(3) in the opinion of the Secretary it is reasonable in amount, and if the Secretary determines that a project cost is unreasonable in amount, he may allow as an allowable project cost only so much of such project cost as he determines to be reasonable; except that in no event may he allow project costs in excess

of the definite amount stated in the grant agreement; and

(4) it has not been included in any project authorized under section 1713 of this title.

The Secretary is authorized to prescribe such regulations, including regulations with respect to the auditing of project costs, as he considers necessary to effectuate the purposes of this section.

(b) Terminal development

(1) Notwithstanding any other provision of this chapter, upon certification by the sponsor of any air carrier airport that such airport has, on the date of submittal of the project application, all the safety and security equipment required for certification of such airport under section 1432 of this title, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning or deplaning from aircraft other than air carrier aircraft, the Secretary may approve, as allowable project costs of a project for airport development at such airport, terminal development (including multimodal terminal development) in nonrevenue producing public-use areas which are directly related to the movement of passengers and baggage in air commerce within the boundaries of the airport, including, but not limited to, vehicles for the movement of passengers between terminal facilities or between terminal facilities and aircraft.

(2) Only sums apportioned under section 1715(a)(3)(A) of this title to the sponsor of an air carrier airport shall be obligated for project costs allowable under paragraph (1) of this subsection in connection with airport development at such airport, and no more than 60 per centum of such sums apportioned for any fiscal year shall be obligated for such costs.

(3) Sums apportioned under section 1715(a)(3)(A) of this title to the sponsor of an air carrier airport at which terminal development was carried out on or after July 1, 1970, and before July 12, 1976, shall be available, subject to the limitations contained in paragraph (2) of this subsection, for the immediate retirement of the principal of bonds or other evidences of indebtedness the proceeds of which were used for that part of the terminal development at such airport the cost of which is allowable under paragraph (1) of this subsection subject to the following conditions:

(A) That such sponsor submits the certification required under paragraph (1) of this subsection.

(B) That the Secretary determines that no project for airport development at such airport outside the terminal area will be deferred if such sums are used for such retirement.

(C) That no funds available for airport development under this chapter shall be obligated for any project for additional terminal development at such airport for a period of three years beginning on the date any such sums are used for such retirement.

(4) Notwithstanding section 1717 of this title, the United States share of project costs allowable under paragraph (1) of this subsection shall be 50 per centum.

(5) The Secretary shall approve project costs allowable under paragraph (1) of this subsection under such terms and conditions as may be necessary to protect the interests of the United States.

(c) Disallowable project costs

Except as provided in subsection (b) of this section, the following are not allowable project costs: (1) the cost of construction of that part of an airport development project intended for use as a public parking facility for passenger automobiles; or (2) the cost of construction, alteration, or repair of a hangar or of any part of an airport building except such of those buildings or parts of buildings intended to house facilities or activities directly related to the safety of persons at the airport.

(Pub. L. 91-258, title I, § 20, May 21, 1970, 84 Stat. 230; Pub. L. 94-353, title I, § 12, July 12, 1976, 90 Stat. 879.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1), read in the original "this title", meaning title I of Pub. L. 91-258, May 21, 1970, 84 Stat. 219, which is classified principally to this chapter. For complete classification of title I of Pub. L. 91-258 to the Code, see Short Title note set out under section 1701 of this title and Tables volume.

This chapter, referred to in subsec. (b)(3)(C), read in the original "this Act", meaning the Airport and Airway Development Act of 1970, title I of Pub. L. 91-258.

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-353, § 12(a), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 94-353, § 12(a), (b), redesignated former subsec. (b) as (c) and, as so redesignated, substituted "Except as provided in subsection (b) of this section, the" for "The".

§ 1721. Payments under grant agreements; advance payments; percentage; recovery of excess and advance payments

The Secretary, after consultation with the sponsor with which a grant agreement has been entered into, may determine the times and amounts in which payments shall be made under the terms of a grant agreement for airport development. Payments in an aggregate amount not to exceed 90 per centum of the United States share of the total estimated allowable project costs may be made from time to time in advance of accomplishment of the airport development to which the payments relate, if the sponsor certifies to the Secretary that the aggregate expenditures to be made from the advance payments will not at any time exceed the cost of the airport development work which has been performed up to that time. If the Secretary determines that the aggregate amount of payments made under a grant agreement at any time exceeds the United States share of the total allowable project costs, the United States shall be entitled to recover the excess. If the Secretary finds that the airport development to which the advance payments relate has not been accomplished within a reasonable time or the development is not completed, the United States may recover any part of the advance payment for which the United States received no benefit. Payments

under a grant agreement shall be made to the official or depository authorized by law to receive public funds and designated by the sponsor.

(Pub. L. 91-258, title I, § 21, May 21, 1970, 84 Stat. 231.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1720 of this title.

§ 1722. Performance of construction work

(a) Regulations

The construction work on any project for airport development approved by the Secretary pursuant to section 1716 of this title shall be subject to inspection and approval by the Secretary and in accordance with regulations prescribed by him. Such regulations shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary. No such regulation shall have the effect of altering any contract in connection with any project entered into without actual notice of the regulation.

(b) Minimum wage rates

All contracts in excess of $2,000 for work on projects for airport development approved under this subchapter which involve labor shall contain provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5) which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

(c) Other labor provisions

All contracts for work on projects for airport development approved under this subchapter which involve labor shall contain such provisions as are necessary to insure (1) that no convict labor shall be employed; and (2) that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given, where they are qualified, to individuals who have served as persons in the military service of the United States, as defined in section 511(1) of the Appendix to title 50, and who have been honorably discharged from such service. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

(Pub. L. 91-258, title I, § 22, May 21, 1970, 84 Stat. 231.)

REFERENCES IN TEXT

The Davis-Bacon Act, as amended, referred to in subsec. (b), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables volume. See also section 262 of Title 29, Labor.

§ 1723. Use of Government-owned lands

(a) Requests for use

Subject to the provisions of subsection (c) of this section, whenever the Secretary determines that use of any lands owned or controlled by the United States is reasonably necessary for carrying out a project for airport development under this subchapter, or for the operation of any public airport, including lands reasonably necessary to meet future development of an airport in accordance with the national airport system plan, he shall file with the head of the department or agency having control of the lands a request that the necessary property interests therein be conveyed to the public agency sponsoring the project in question or owning or controlling the airport. The property interest may consist of the title to, or any other interest in, land or any easement through or other interest in airspace.

(b) Execution of conveyances

Upon receipt of a request from the Secretary under this section, the head of the department or agency having control of the lands in question shall determine whether the requested conveyance is inconsistent with the needs of the department or agency, and shall notify the Secretary of his determination within a period of four months after receipt of the Secretary's request. If the department or agency head determines that the requested conveyance is not inconsistent with the needs of that department or agency, the department or agency head is hereby authorized and directed, with the approval of the President and the Attorney General of the United States, and without any expense to the United States, to perform any acts and to execute any instruments necessary to make the conveyance requested. A conveyance may be made only on the condition that, at the option of the Secretary, the property interest conveyed shall revert to the United States in the event that the lands in question are not developed for airport purposes or used in a manner consistent with the terms of the conveyance. If only a part of the property interest conveyed is not developed for airport purposes, or used in a manner consistent with the terms of the conveyance, only that particular part shall at the option of the Secretary, revert to the United States.

(c) Exemption of certain lands

Unless otherwise specifically provided by law, the provisions of subsections (a) and (b) of this section shall not apply with respect to lands owned or controlled by the United States within any national park, national monument, national recreation area, or similar area under the administration of the National Park Service; within any unit of the National Wildlife Refuge System or similar area under the jurisdiction of the United States Fish and Wildlife Service; or within any national forest or Indian reservation.

(Pub. L. 91-258, title I, § 23, May 21, 1970, 84 Stat. 232; Pub. L. 93-271, § 1(c), Apr. 22, 1974, 88 Stat. 92.)

TRANSFER OF FUNCTIONS

The Bureau of Sport Fisheries and Wildlife was succeeded by the United States Fish and Wildlife Service pursuant to Pub. L. 93-271, § 1(c), Apr. 22, 1974, 88 Stat. 92. See section 742b of Title 16, Conservation.

EX. ORD. NO. 10536. EXERCISE OF FUNCTIONS WITHOUT APPROVAL OF THE PRESIDENT

Ex. Ord. No. 10536, eff. June 9, 1954, 19 F.R. 3437, as amended by Ex. Ord. No. 11382, eff. Nov. 28, 1967, 32 F.R. 16247, provided that:

The authority vested in the heads of departments and agencies by subsection (b) of section 16 of the Federal Airport Act, approved May 13, 1946 (60 Stat. 179), with the approval of the President and the Attorney General of the United States, to perform any acts and to execute any instruments necessary to make conveyances requested by the Secretary of Transportation under subsection (a) of the said section 16 may be exercised by such heads of departments and agencies without the approval of the President.

§ 1724. Reports to Congress

On or before the third day of January of each year the Secretary shall make a report to the Congress describing his operations under this subchapter during the preceding fiscal year. The report shall include a detailed statement of the airport development accomplished, the status of each project undertaken, the allocation of appropriations, and an itemized statement of expenditures and receipts.

(Pub. L. 91-258, title I, § 24, May 21, 1970, 84 Stat. 232.)

STUDY AND REPORT TO CONGRESS CONCERNING AIRPORT CLOSINGS

Pub. L. 94-353, title I, § 20, July 12, 1976, 90 Stat. 883, provided that the Secretary of Transportation conduct a study of airports in areas where land requirements, local taxes, or a low revenue return per acre may close such airports and report the results of such study to Congress by Jan. 1, 1978, including therein the identification of those locations which may be converted to nonaviation uses and recommendations concerning methods for preserving those airports which in the Secretary's judgment should be preserved in the public interest.

§ 1725. False statements, representations, or reports; penalties

Any officer, agent, or employee of the United States, or any officer, agent, or employee of any public agency, or any person, association, firm, or corporation who, with intent to defraud the United States—

(1) knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the costs thereof, in connection with the submission of plans, maps, specifications, contracts, or estimates of project costs for any project submitted to the Secretary for approval under this subchapter;

(2) knowingly makes any false statement, false representation, or false report or claim for work or materials for any project approved by the Secretary under this subchapter; or

(3) knowingly makes any false statement or false representation in any report required to be made under this subchapter;

shall, upon conviction thereof, be punished by imprisonment for not to exceed five years or by a fine of not to exceed $10,000, or by both.

(Pub. L. 91-258, title I, § 25, May 21, 1970, 84 Stat. 233.)

§ 1726. Access to records

(a) Recordkeeping requirements

Each recipient of a grant under this subchapter shall keep such records as the Secretary may prescribe, including records which fully disclose the amount and the disposition by the recipient of the proceeds of the grant, the total cost of the plan or program in connection with which the grant is given or used, and the amount and nature of that portion of the cost of the plan or program supplied by other sources, and such other records as will facilitate an effective audit.

(b) Audit and examination

The Secretary and the Comptroller General of the United States or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to grants received under this subchapter.

(c) Audit reports; report to Congress; regulations

In any case in which an independent audit is made of the accounts of a recipient of a grant under this subchapter relating to the disposition of the proceeds of such grant or relating to the plan or program in connection with which the grant was given or used, the recipient shall file a certified copy of such audit with the Comptroller General of the United States not later than six months following the close of the fiscal year for which the audit was made. On or before January 3 of each year the Comptroller General shall make a report to the Congress describing the results of each audit conducted or reviewed by him under this section during the preceding fiscal year. The Comptroller General shall prescribe such regulations as he may deem necessary to carry out the provisions of this subsection.

(d) Withholding information

Nothing in this section shall authorize the withholding of information by the Secretary or the Comptroller General of the United States, or any officer or employee under the control of either of them, from the duly authorized committees of the Congress.

(Pub. L. 91-258, title I, § 26, May 21, 1970, 84 Stat. 233.)

§ 1727. General powers of Secretary

The Secretary is empowered to perform such acts, to conduct such investigations and public hearings, to issue and amend such orders, and to make and amend such regulations and procedures, pursuant to and consistent with the provisions of this subchapter, as he considers necessary to carry out the provisions of, and to exercise and perform his powers and duties under, this subchapter.

(Pub. L. 91-258, title I, § 27, May 21, 1970, 84 Stat. 233.)

§ 1728. State demonstration programs

(a) Grants; condition

If the Secretary determines, after review of the certification required by subsection (b) of this section, that a State is capable of managing a demonstration program for administering United States grants for general aviation airports in that State, the Secretary may make a grant for such purpose to such State of funds apportioned to it under section 1715(a)(4)(A) of this title and of any part of the discretionary funds available under section 1715(a)(4)(C) of this title. Such a grant shall be conditioned on a requirement that such State grant funds to airport sponsors in the same manner and subject to the same conditions as the Secretary imposes in making grants to such sponsors under this chapter.

(b) Certification requirements

If a State wishes to manage a demonstration program for administering United States grants for general aviation airports, the Governor or the chief executive officer of such State shall certify to the Secretary, in the form and manner prescribed by the Secretary, that—

(1) the State complies with all eligibility requirements and criteria established by this section and by the Secretary;

(2) such State's participation in the demonstration program has been specifically authorized by an action of such State's legislature duly taken after July 12, 1976, or if such State's legislature is not in regular session on such date and will not meet again in regular session before January 1, 1977, such participation has been authorized by such State's Governor or chief executive officer; and

(3) such State's legislature has authorized the appropriation of State funds for the development of general aviation airports in such State during the period for which funds are sought under this section.

(c) Restrictions

The Secretary shall not, pursuant to this section—

(1) enter into demonstration projects in more than four States;

(2) allow any funds granted to States to be used to pay costs incurred by the States in administering the demonstration programs;

(3) initiate any demonstration program after January 1, 1977; and

(4) make a grant to any State after September 30, 1978.

(d) Report to Congress

The Secretary shall evaluate and report to Congress, not later than March 31, 1978, on the results of any demonstration programs assisted under this section.

(Pub. L. 91-258, title I, § 28, as added Pub. L. 94-353, title I, § 13, July 12, 1976, 90 Stat. 880.)

References in Text

This chapter, referred to in subsec. (a), read in the original "this title", meaning title I of Pub. L. 91-258, May 21, 1970, 84 Stat. 219, which is classified principally to this chapter. For complete classification of title I of Pub. L. 91-258 to the Code, see Short Title note set out under section 1701 of this title and Tables volume.

§ 1729. Air carrier airport designation

Notwithstanding any other provision of this chapter, in the case of any public airport at which (A) an air carrier was or is certificated by the Civil Aeronautics Board under section 1371 of this title to serve a city served through such airport, and (B) either (i) service to such city by every such certificated air carrier has been suspended as authorized by the Civil Aeronautics Board, or (ii) authority to serve such city has been deleted from the certificates of every such air carrier by the Civil Aeronautics Board after July 12, 1976, and (C) such airport is served by an intrastate air carrier operating in intrastate air transportation within the meaning of section 1301(22) and (23) of this title, such airport shall be deemed to be an air carrier airport (other than a commuter service airport) for the purposes of this chapter.

(Pub. L. 91-258, title I, § 29, as added Pub. L. 94-353, title I, § 14, July 12, 1976, 90 Stat. 881.)

References in Text

This chapter, referred to in text, read in the original "this title", meaning title I of Pub. L. 91-258, May 21, 1970, 84 Stat. 219, which is classified principally to this chapter. For complete classification of title I of Pub. L. 91-258 to the Code, see Short Title note set out under section 1701 of this title and Tables volume.

§ 1730. Civil rights

The Secretary shall take affirmative action to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any activity conducted with funds received from any grant made under this chapter. The Secretary shall promulgate such rules as he deems necessary to carry out the purposes of this section and may enforce this section, and any rules promulgated under this section, through agency and department provisions and rules which shall be similar to those established and in effect under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.]. The provisions of this section shall be considered to be in addition to and not in lieu of the provisions of title VI of the Civil Rights Act of 1964.

(Pub. L. 91-258, title I, § 30, as added Pub. L. 94-353, title I, § 14, July 12, 1976, 90 Stat. 881.)

References in Text

This chapter, referred to in text, read in the original "this title", meaning title I of Pub. L. 91-258, May 21, 1970, 84 Stat. 219, which is classified principally to this chapter. For complete classification of title I of Pub. L. 91-258 to the Code, see Short Title note set out under section 1701 of this title and Tables volume.

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables volume.

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§ 1741. Maximum charges for certain overtime services

(a) Customs Service, Immigration and Naturalization Service, Public Health Service, and Department of Agriculture; services for private aircraft or vessel upon domestic arrival or departure

Notwithstanding the provisions of section 1451 of title 19 or any other provisions of law, the maximum amount payable by the owner, operator, or agent of any private aircraft or private vessel for services performed on or after July 1, 1970, upon the request of such owner, operator, or agent, by officers and employees of the Customs Service, by officers and employees of the Immigration and Naturalization Service, by officers and employees (including an independent contractor performing inspectional services) of the Public Health Service, and by officers and employees of the Department of Agriculture, on a Sunday or holiday, or at any time after 5 o'clock postmeridian or before 8 o'clock antemeridian on a week day, in connection with the arrival in or departure from the United States of such private aircraft or vessel, shall not exceed $25.

(b) Free week day services of regular personnel

Notwithstanding any other provision of law, no payment shall be required for services described in subsection (a) of this section if such services are performed on a week day and an officer or employee stationed on his regular tour of duty at the place of arrival or departure is available to perform such services.

(c) Credit against expenses; deposit of collections in Treasury

Amounts payable for services described in subsection (a) of this section shall be collected by the Department or agency providing the services and shall be deposited into the Treasury of the United States to the credit of the appropriation of that agency charged with the expense of such services.

(d) Definitions

As used in this section—

(1) the term "private aircraft" means any civilian aircraft not being used to transport persons or property for compensation or hire, and

(2) the term "private vessel" means any civilian vessel not being used (A) to transport persons or property for compensation or hire, or (B) in fishing operations or in processing of fish or fish products.

(e) Limitation on charges for government inspection of persons and property

The cost of any inspection or quarantine service which is required to be performed by the Federal Government or any agency thereof at airports of entry or other places of inspection as a consequence of the operation of aircraft, and which is performed during regularly established hours of service on Sundays or holidays shall be reimbursed by the owners or operators of such aircraft only to the same extent as if such service had been performed during regularly established hours of service on weekdays. Notwithstanding any other provision of law, administrative overhead costs associated with any inspection or quarantine service required to be performed by the United States Government, or any agency thereof, at airports of entry as a result of the operation of aircraft, shall not be assessed against the owners or operators thereof.

(Pub. L. 91-258, title I, § 53, May 21, 1970, 84 Stat. 236; Pub. L. 94-353, title I, § 15(a), July 12, 1976, 90 Stat. 882.)

AMENDMENTS

1976—Subsec. (e). Pub. L. 94-353 added subsec. (e).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 15(b) of Pub. L. 94-353 provided that: "The amendment made by subsection (a) of this section [adding subsec. (e) of this section] shall take effect January 1, 1977."

§ 1742. Airport and Airway Trust Fund

(a) Creation

There is established in the Treasury of the United States a trust fund to be known as the "Airport and Airway Trust Fund" (hereinafter in this section referred to as the "Trust Fund"), consisting of such amounts as may be appropriated or credited to the Trust Fund as provided in this section.

(b) Transfer to Trust Fund of amounts equivalent to certain taxes

There is hereby appropriated to the Trust Fund—

(1) amounts equivalent to the taxes received in the Treasury after June 30, 1970, and before July 1, 1980, under subsections (c) and (d) of section 4041 (taxes on aviation fuel) and under sections 4261, 4271, and 4491 (taxes on transportation by air and on use of civil aircraft) of title 26;

(2) amounts determined by the Secretary of the Treasury to be equivalent to the taxes received in the Treasury after June 30, 1970, and before July 1, 1980, under section 4081 of title 26, with respect to gasoline used in aircraft; and

(3) amounts determined by the Secretary of the Treasury to be equivalent to the taxes received in the Treasury after June 30, 1970, and before July 1, 1980, under paragraphs (2) and (3) of section 4071(a) of title 26, with respect to tires and tubes of the types used on aircraft.

The amounts appropriated by paragraphs (1), (2), and (3) shall be transferred at least quarterly from the general fund of the Treasury to the Trust Fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in paragraphs (1), (2), and (3) received in the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(c) Transfer of unexpended funds

At the close of June 30, 1970, there shall be transferred to the Trust Fund all unexpended funds which have been appropriated before July 1, 1970, out of the general fund of the Treasury to meet obligations of the United States (1) described in subparagraph (B) or (C)

of subsection (f)(1) of this section, or (2) incurred under the Federal Airport Act (49 U.S.C., sec. 1101 et seq.).

(d) Appropriation of additional sums

There are hereby authorized to be appropriated to the Trust Fund such additional sums as may be required to make the expenditures referred to in subsection (f) of this section.

(e) Management; report to Congress; investment: general provision, sale of obligations, interest on certain proceeds

(1) It shall be the duty of the Secretary of the Treasury to hold the Trust Fund, and (after consultation with the Secretary of Transportation) to report to the Congress each year on the financial condition and the results of the operations of the Trust Fund during the preceding fiscal year and on its expected condition and operations during the next five fiscal years. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(2)(A) It shall be the duty of the Secretary of the Treasury to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired (i) on original issue at the issue price, or (ii) by purchase of outstanding obligations at the market price. The purpose for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Trust Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the Public Debt; except that where such average rate is not a multiple of one-eighth of 1 percent, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest.

(B) Any obligation acquired by the Trust Fund (except special obligations issued exclusively to the Trust Fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

(C) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(3) Paragraph (2) of this subsection shall not apply until the beginning of the fiscal year immediately following the first fiscal year beginning after June 30, 1970, in which the receipts of the Trust Fund under subsection (b) of this section exceed 80 percent of the expenditures from the Trust Fund under subsection (f)(1) of this section.

(f) Expenditures from Trust Fund; airport and airway program; transfers from Trust Fund on account of certain refunds; transfers from Trust Fund on account of certain section 39 credits

(1) Amounts in the Trust Fund shall be available, as provided by appropriation Acts, for making expenditures after June 30, 1970, and before October 1, 1980, to meet those obligations of the United States—

(A) incurred under title I of this Act or of the Airport and Airway Development Act Amendments of 1976 (as such Acts were in effect on July 12, 1976);

(B) heretofore or hereafter incurred under the Federal Aviation Act of 1958, as amended [49 U.S.C. 1301 et seq.], which are attributable to planning, research and development, construction, or operation and maintenance of—

(i) air traffic control,

(ii) air navigation,

(iii) communications, or

(iv) supporting services,

for the airway system; or

(C) for those portions of the administrative expenses of the Department of Transportation which are attributable to activities described in subparagraph (A) or (B).

(2) The Secretary of the Treasury shall pay from time to time from the Trust Fund into the general fund of the Treasury amounts equivalent to—

(A) the amounts paid after June 30, 1970, and before October 1, 1980, in respect of fuel used in aircraft, under sections 6420 (relating to amounts paid in respect of gasoline used on farms), 6421 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes), and 6427 (relating to fuels not used for taxable purposes) of title 26, and

(B) the amounts paid under section 6426 of title 26 (relating to refund of aircraft use tax where plane transports for hire in foreign air commerce),

on the basis of claims filed for periods beginning after June 30, 1970.

(3) The Secretary of the Treasury shall pay from time to time from the Trust Fund into the general fund of the Treasury amounts equivalent to the credits allowed under section 39 of title 26 with respect to fuel used in aircraft during taxable years ending after June 30, 1970, and beginning before October 1, 1980, and attributable to use after June 30, 1970, and before October 1, 1980. Such amounts shall be transferred on the basis of estimates by the Secretary of the Treasury, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the credits allowed.

(Pub. L. 91-258, title II, § 208(a)-(f), May 21, 1970, 84 Stat. 250; Pub. L. 94-353, title III, § 301(a), July 12, 1976, 90 Stat. 886.)

REFERENCES IN TEXT

The Federal Airport Act (49 U.S.C., sec. 1101 et seq.), referred to in subsec. (c), is act May 13, 1946, ch. 251, 60 Stat. 170, as amended, which was classified to chap-

ter 14 (§ 1101 et seq.) of this title. The Act was repealed by section 52(a) of the Airport and Airway Development Act of 1970 (Pub. L. 91-258, title I, May 21, 1970, 84 Stat. 235), and is now covered by this chapter.

The Second Liberty Bond Act, as amended, referred to in subsec. (e)(2)(A), is act Sept. 24, 1917, ch. 56, 40 Stat. 288, as amended. For complete classification of this Act to the Code, see References in Text note set out under section 774 of Title 31, Money and Finance, and Tables volume.

Title I of this Act, referred to in subsec. (f)(1)(A), probably means title I of Pub. L. 91-258, May 21, 1970, 84 Stat. 219, known as the Airport and Airway Development Act of 1970, which is classified principally to this chapter. For complete classification of title I of Pub. L. 91-258 to the Code, see Short Title note set out under section 1701 of this title and Tables volume.

The Airport and Airway Development Act Amendments of 1976, referred to in subsec. (f)(1)(A), is Pub. L. 94-353, July 12, 1976, 90 Stat. 871, which enacted sections 1346a, 1356a, 1358, 1704, and 1728 to 1730 of this title, amended sections 1344, 1371, 1432, 1701, 1711 to 1720, 1741, and 1742 of this title, and enacted provisions set out as notes under sections 1348, 1702, 1713, 1715, 1718, 1724, 1741, and 1742 of this title. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note under section 1701 of this title and Tables volume.

The Federal Aviation Act of 1958, referred to in subsec. (f)(1)(B), is Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, as amended, which is classified principally to chapter 20 (§ 1301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

CODIFICATION

Section was not enacted as part of title I of Pub. L. 91-258, May 21, 1970, 84 Stat. 219, known as the Airport and Airway Development Act of 1970, which comprises this chapter.

AMENDMENTS

1976—Subsec. (f). Pub. L. 94-353 substituted "October 1, 1980" for "July 1, 1980" wherever appearing therein and in subpar. (1)(A) "or of the Airport and Airway Development Act Amendments of 1976 (as such Acts were in effect on July 12, 1976);" for "(as in effect on May 21, 1970), or incurred at any time before July 1, 1970, under the Federal Airport Act;", and struck out "hereafter" following "(A)".

EFFECTIVE DATE OF 1976 AMENDMENT

Section 301(b) of Pub. L. 94-353 provided that: "The amendment made by subsection (a)(1) [amending subsec. (f)(1)(A) of this section] shall apply to obligations incurred on or after the date of the enactment of this Act [July 12, 1976]. The amendments made by subsection (a)(2) [amending subsec. (f) of this section] shall be effective on the date of enactment of this Act [July 12, 1976]."

TAX BURDEN OF USERS OF FEDERAL AIRPORTS AND AIRWAYS: STUDY AND INVESTIGATION, REPORTS TO CONGRESS, AND FUNDS FOR UNDERTAKING

Section 209 of Pub. L. 91-258 required a study, investigation, and interim and final reports to Congress no later than Mar. 1, 1971, and 1972, printed as a House document, to make available information to be the basis for revision of laws to assure an equitable distribution of tax burden among classes of persons using United States airports and airways or deriving benefits therefrom; and authorized appropriation of necessary funds from Airport and Airway Trust Fund for execution of such provisions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1714 of this title.

§ 1743. Interstate compacts for airport facilities

The consent of Congress is given to each of the several States to enter into any agreement or compact, not in conflict with any law of the United States, with any other State or States for the purpose of developing or operating airport facilities. The right to alter, amend, or repeal this section is expressly reserved.

(Pub. L. 86-154, Aug. 11, 1959, 73 Stat. 333.)

CODIFICATION

Section was formerly classified to section 1103a of this title.

Section was not enacted as a part of Pub. L. 91-258, title I, May 21, 1970, 84 Stat. 219, known as the Airport and Airway Development Act of 1970, which comprises this chapter.

CHAPTER 26—HAZARDOUS MATERIALS TRANSPORTATION CONTROL

§§ 1761, 1762. Repealed. Pub. L. 93-633, title I, § 113(g), Jan. 3, 1975, 88 Stat. 2163

Section 1761, Pub. L. 91-458, title III, § 302, Oct. 16, 1970, 84 Stat. 977, related to authority of the Secretary of Transportation respecting hazardous materials transportation control, providing in: subsec. (a) for establishment of facilities and technical staff for evaluation of hazards, establishment of central reporting system for accidents, and conduct of review and making of recommendations regarding transportation of hazardous materials; subsec. (b) for the authority as being additional to that granted under sections 831 to 835 of title 18; subsec. (c) for annual reports; and subsec. (d) for recommendations for additional legislation.

Section 1762, Pub. L. 91-458, title III, § 303, Oct. 16, 1970, 84 Stat. 977; Pub. L. 93-90, § 3, Aug. 14, 1973, 87 Stat. 305, authorized $1,200,000 appropriations authorization for fiscal year ending June 30, 1974, for hazardous materials transportation control.

Subject matter is now covered by section 1801 et seq. of this title.

EFFECTIVE DATE OF REPEAL; CONTINUANCE OF PRIOR PROVISIONS; TWO YEAR LIMITATION AFTER JANUARY 3, 1975, FOR ARRANGEMENTS, INCLUDING LICENSES, ETC., TO COMPLY WITH PUB. L. 93-633; PENDING PROCEEDINGS UNAFFECTED

Repeal by Pub. L. 93-633 effective Jan. 3, 1975, except as otherwise provided, see section 114 of Pub. L. 93-633, set out as an Effective Date of 1975 Amendment note under section 1801 of this title.

CHAPTER 27—HAZARDOUS MATERIALS TRANSPORTATION

Sec.
1801. Congressional declaration of policy.
1802. Definitions.
1803. Designation of hazardous materials.
1804. Regulations governing transportation of hazardous materials.
(a) General.
(b) Cooperation.
(c) Representation.
1805. Handling of hazardous materials.
(a) Criteria.
(b) Registration.
(c) Requirement.
1806. Exemptions.
(a) General.
(b) Vessels.
(c) Firearms and ammunition.
(d) Limitation on authority.

Sec.
1807. Transportation of radioactive materials on passenger-carrying aircraft.
(a) General.
(b) Definition.
1808. Powers and duties of Secretary.
(a) General.
(b) Records.
(c) Inspection.
(d) Facilities and duties.
(e) Annual report.
1809. Penalties.
(a) Civil.
(b) Criminal.
1810. Specific relief.
(a) General.
(b) Imminent hazard.
1811. Relationship to other laws.
(a) General.
(b) State laws.
(c) Other federal laws.
1812. Authorization of appropriations.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 section 6923; title 45 section 440.

§ 1801. Congressional declaration of policy

It is declared to be the policy of Congress in this chapter to improve the regulatory and enforcement authority of the Secretary of Transportation to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce.

(Pub. L. 93-633, title I, § 102, Jan. 3, 1975, 88 Stat. 2156.)

REFERENCES IN TEXT

This chapter, referred to in text, read in the original "this title", meaning title I of Pub. L. 93-633, Jan. 3, 1975, 88 Stat. 2156, which is classified principally to this chapter. For complete classification of title I of Pub. L. 93-633 to the Code, see Short Title note set out below and Tables volume.

EFFECTIVE DATE; CONTINUANCE OF PRIOR PROVISIONS; TWO YEAR LIMITATION AFTER JANUARY 3, 1975, FOR ARRANGEMENTS, INCLUDING LICENSES, ETC., TO COMPLY WITH PUB. L. 93-633; PENDING PROCEEDINGS UNAFFECTED

Section 114 of Pub. L. 93-633 provided that:

"(a) Except as provided in this section, the provisions of this title [see Short Title note below] shall take effect on the date of enactment [Jan. 3, 1975].

"(b)(1) Except as provided in section 108 of this title [section 1807 of this title] or paragraph (2) of this subsection, any order, determination, rule, regulation, permit, contract, certificate, license, or privilege issued, granted, or otherwise authorized or allowed, prior to the date of enactment of this title [Jan. 3, 1975], pursuant to any provision of law amended or repealed by this title [Jan. 3, 1975], shall continue in effect according to its terms or until repealed, terminated, withdrawn, amended, or modified by the Secretary or a court of competent jurisdiction.

"(2) The Secretary shall take all steps necessary to bring orders, determinations, rules, and regulations into conformity with the purposes and provisions of this title [see Short Title note below] as soon as practicable, but in any event no permits, contracts, certificates, licenses, or privileges granted prior to the date of enactment of this title [Jan. 3, 1975], or renewed or extended thereafter, shall be of any effect more than 2 years after the date of enactment of this title [Jan. 3, 1975], unless there is full compliance with the purposes and provisions of this Act [see Short Title note below] and regulations thereunder.

"(c) Proceedings pending upon the date of enactment of this title [Jan. 3, 1975] shall not be affected by the provisions of this title [see Short Title note below] and shall be completed as if this title [see Short Title note below] had not been enacted, unless the Secretary makes a determination that the public health and safety otherwise require."

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94-474, § 1, Oct. 11, 1976, 90 Stat. 2068, provided: "That this Act [amending sections 1805 and 1812 of this title] may be cited as the 'Hazardous Materials Transportation Act Amendments of 1976'."

SHORT TITLE

Section 1 of Pub. L. 93-633 provided: "That this Act [which enacted this chapter and sections 1901 to 1907 of this title, amended sections 1471, 1472, 1653, and 1655 of this title, sections 39, 437, 438, 440, and 441 of Title 45, Railroads, and section 170 of Title 46, Shipping, repealed sections 1654, 1761, and 1762 of this title, and enacted provisions set out as notes under this section, section 1901 of this title and section 440 of Title 45] may be cited as the 'Transportation Safety Act of 1974'."

Section 101 of Pub. L. 93-633 provided that: "This title [which enacted this chapter, amended sections 1471, 1472, and 1655 of this title and section 170 of Title 46, Shipping, repealed sections 1761 and 1762 of this title, and enacted provisions set out as notes under this section] may be cited as the 'Hazardous Materials Transportation Act'."

§ 1802. Definitions

As used in this chapter, the term—

(1) "commerce" means trade, traffic, commerce, or transportation, within the jurisdiction of the United States (A) between a place in a State and any place outside of such State, or (B) which affects trade, traffic, commerce, or transportation described in clause (A);

(2) "hazardous material" means a substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce;

(3) "Secretary" means the Secretary of Transportation, or his delegate;

(4) "serious harm" means death, serious illness, or severe personal injury;

(5) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, or Guam;

(6) "transports" or "transportation" means any movement of property by any mode, and any loading, unloading, or storage incidental thereto; and

(7) "United States" means all of the States.

(Pub. L. 93-633, title I, § 103, Jan. 3, 1975, 88 Stat. 2156.)

REFERENCES IN TEXT

This chapter, referred to in text preceding par. (1), read in the original "this title", meaning title I of Pub. L. 93-633, Jan. 3, 1975, 88 Stat. 2156, which is classified principally to this chapter. For complete classification of title I of Pub. L. 93-633 to the Code, see Short Title note set out under section 1801 of this title and Tables volume.

§ 1803. Designation of hazardous materials

Upon a finding by the Secretary, in his discretion, that the transportation of a particular

quantity and form of material in commerce may pose an unreasonable risk to health and safety or property, he shall designate such quantity and form of material or group or class of such materials as a hazardous material. The materials so designated may include, but are not limited to, explosives, radioactive materials, etiologic agents, flammable liquids or solids, combustible liquids or solids, poisons, oxidizing or corrosive materials, and compressed gases.

(Pub. L. 93-633, title I, § 104, Jan. 3, 1975, 88 Stat. 2156.)

§ 1804. Regulations governing transportation of hazardous materials

(a) General

The Secretary may issue, in accordance with the provisions of section 553 of title 5 including an opportunity for informal oral presentation, regulations for the safe transportation in commerce of hazardous materials. Such regulations shall be applicable to any person who transports, or causes to be transported or shipped, a hazardous material, or who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person for use in the transportation in commerce of certain hazardous materials. Such regulations may govern any safety aspect of the transportation of hazardous materials which the Secretary deems necessary or appropriate, including, but not limited to, the packing, repacking, handling, labeling, marking, placarding, and routing (other than with respect to pipelines) of hazardous materials, and the manufacture, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold by such person for use in the transportation of certain hazardous materials.

(b) Cooperation

In addition to other applicable requirements, the Secretary shall consult and cooperate with representatives of the Interstate Commerce Commission and shall consider any relevant suggestions made by such Commission, before issuing any regulation with respect to the routing of hazardous materials. Such Commission shall, to the extent of its lawful authority, take such action as is necessary or appropriate to implement any such regulation.

(c) Representation.

No person shall, by marking or otherwise, represent that a container or package for the transportation of hazardous materials is safe, certified, or in compliance with the requirements of this Act, unless it meets the requirements of all applicable regulations issued under this Act.

(Pub. L. 93-633, title I, § 105, Jan. 3, 1975, 88 Stat. 2157.)

References in Text

"This Act", referred to in subsec. (c), means Pub. L. 93-633, Jan. 3, 1975, 88 Stat. 2156, known as the Transportation Safety Act of 1974, which enacted this chapter and sections 1901 to 1907 of this title, amended sections 1471, 1472, 1653, and 1655 of this title, sections 39, 437, 438, 440, and 441 of Title 45, Railroads, and section 170 of Title 46, Shipping, repealed sections 1654, 1761, and 1762 of this title, and enacted provisions set out as notes under sections 1801 and 1901 of this title and section 440 of Title 45. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables volume.

Section Referred to in Other Sections

This section is referred to in sections 1472, 1806, 1807 of this title.

§ 1805. Handling of hazardous materials

(a) Criteria

The Secretary is authorized to establish criteria for handling hazardous materials. Such criteria may include, but need not be limited to, a minimum number of personnel; a minimum level of training and qualification for such personnel; type and frequency of inspection; equipment to be used for detection, warning, and control of risks posed by such materials; specifications regarding the use of equipment and facilities used in the handling and transportation of such materials; and a system of monitoring safety assurance procedures for the transportation of such materials. The Secretary may revise such criteria as required.

(b) Registration

Each person who transports or causes to be transported or shipped in commerce hazardous materials or who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests packages or containers which are represented, marked, certified, or sold by such person for use in the transportation in commerce of certain hazardous materials (designated by the Secretary) may be required by the Secretary to prepare and submit to the Secretary a registration statement not more often than once every 2 years. Such a registration statement shall include, but need not be limited to, such person's name; principal place of business; the location of each activity handling such hazardous materials; a complete list of all such hazardous materials handled; and an averment that such person is in compliance with all applicable criteria established under subsection (a) of this section. The Secretary shall by regulation prescribe the form of any such statement and the information required to be included. The Secretary shall make any registration statement filed pursuant to this subsection available for inspection by any person, without charge, except that nothing in this sentence shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5, or which is otherwise protected by law from disclosure to the public.

(c) Requirement

No person required to file a registration statement under subsection (b) of this section may transport or cause to be transported or shipped hazardous materials, or manufacture, fabricate, mark, maintain, recondition, repair, or test packages or containers for use in the transportation of hazardous materials, unless he has on file a registration statement.

(Pub. L. 93-633, title I, § 106, Jan. 3, 1975, 88 Stat. 2157; Pub. L. 94-474, § 2, Oct. 11, 1976, 90 Stat. 2068.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94-474 struck out "extremely" following "or shipped" and "transportation of".

§ 1806. Exemptions

(a) General

The Secretary, in accordance with procedures prescribed by regulation, is authorized to issue or renew, to any person subject to the requirements of this chapter, an exemption from the provisions of this chapter, and from regulations issued under section 1804 of this title, if such person transports or causes to be transported or shipped hazardous materials in a manner so as to achieve a level of safety (1) which is equal to or exceeds that level of safety which would be required in the absence of such exemption, or (2) which would be consistent with the public interest and the policy of this chapter in the event there is no existing level of safety established. The maximum period of an exemption issued or renewed under this section shall not exceed 2 years, but any such exemption may be renewed upon application to the Secretary. Each person applying for such an exemption or renewal shall, upon application, provide a safety analysis as prescribed by the Secretary to justify the grant of such exemption. A notice of an application for issuance or renewal of such exemption shall be published in the Federal Register. The Secretary shall afford access to any such safety analysis and an opportunity for public comment on any such application, except that nothing in this sentence shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5, or which is otherwise protected by law from disclosure to the public.

(b) Vessels

The Secretary shall exclude, in whole or in part, from any applicable provisions and regulations under this chapter, any vessel which is excepted from the application of section 201 of the Ports and Waterways Safety Act of 1972 by paragraph (2) of such section, or any other vessel regulated under such Act, to the extent of such regulation.

(c) Firearms and ammunition

Nothing in this chapter, or in any regulation issued under this chapter, shall be construed to prohibit or regulate the transportation by any individual, for personal use, of any firearm (as defined in paragraph (4) of section 232 of title 18) or any ammunition therefor, or to prohibit any transportation of firearms or ammunition in commerce.

(d) Limitation on authority

Except when the Secretary determines that an emergency exists, exemptions or renewals granted pursuant to this section shall be the only means by which a person subject to the requirements of this chapter may be exempted from or relieved of the obligation to meet any requirements imposed under this chapter.

(Pub. L. 93-633, title I, § 107, Jan. 3, 1975, 88 Stat. 2158.)

REFERENCES IN TEXT

This chapter, referred to in text, read in the original "this title", meaning title I of Pub. L. 93-633, Jan. 3, 1975, 88 Stat. 2156, which is classified principally to this chapter. For complete classification of title I of Pub. L. 93-633 to the Code, see Short Title note set out under section 1801 of this title and Tables volume.

The Ports and Waterways Safety Act of 1972 and "such Act", referred to in subsec. (b), mean Pub. L. 92-340, July 10, 1972, 86 Stat. 424, which is classified principally to chapter 25 (§ 1221 et seq.) of Title 33, Navigation and Navigable Waters. Section 201 of the Ports and Waterways Act of 1972 amended section 391a of Title 46, Shipping. For complete classification of this Act to the Code, see Short Title note set out under section 1221 of Title 33 and Tables volume.

§ 1807. Transportation of radioactive materials on passenger-carrying aircraft

(a) General

Within 120 days after January 3, 1975, the Secretary shall issue regulations, in accordance with this section and pursuant to section 1804 of this title, with respect to the transportation of radioactive materials on any passenger-carrying aircraft in air commerce, as defined in section 1301(4) of this title. Such regulations shall prohibit any transportation of radioactive materials on any such aircraft unless the radioactive materials involved are intended for use in, or incident to, research, or medical diagnosis or treatment, so long as such materials as prepared for and during transportation do not pose an unreasonable hazard to health and safety. The Secretary shall further establish effective procedures for monitoring and enforcing the provisions of such regulations.

(b) Definition

As used in this section, "radioactive materials" means any materials or combination of materials which spontaneously emit ionizing radiation. The term does not include materials in which (1) the estimated specific activity is not greater than 0.002 microcuries per gram of material; and (2) the radiation distributed in an essentially uniform manner.

(Pub. L. 93-633, title I, § 108, Jan. 3, 1975, 88 Stat. 2159.)

§ 1808. Powers and duties of Secretary

(a) General

The Secretary is authorized to the extent necessary to carry out his responsibilities under this chapter, to conduct investigations, make reports, issue subpoenas, conduct hearings, require the production of relevant documents, records, and property, take depositions, and conduct, directly or indirectly, research, development, demonstration, and training activities. The Secretary is further authorized, after notice and an opportunity for a hearing, to issue orders directing compliance with this chapter or regulations issued under this chapter; the district courts of the United States shall have jurisdiction, upon petition by the Attorney General, to enforce such orders by appropriate means.

(b) Records

Each person subject to requirements under this chapter shall establish and maintain such records, make such reports, and provide such information as the Secretary shall by order or

regulation prescribe, and shall submit such reports and shall make such records and information available as the Secretary may request.

(c) Inspection

The Secretary may authorize any officer, employee, or agent to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties relate to—

(1) the manufacture, fabrication, marking, maintenance, reconditioning, repair, testing, or distribution of packages or containers for use by any person in the transportation of hazardous materials in commerce; or

(2) the transportation or shipment by any person of hazardous materials in commerce.

Any such officer, employee, or agent shall, upon request, display proper credentials.

(d) Facilities and duties

The Secretary shall—

(1) establish and maintain facilities and technical staff sufficient to provide, within the Federal government, the capability of evaluating risks connected with the transportation of hazardous materials and materials alleged to be hazardous;

(2) establish and maintain a central reporting system and data center so as to be able to provide the law-enforcement and firefighting personnel of communities, and other interested persons and government officers, with technical and other information and advice for meeting emergencies connected with the transportation of hazardous materials; and

(3) conduct a continuing review of all aspects of the transportation of hazardous materials in order to determine and to be able to recommend appropriate steps to assure the safe transportation of hazardous materials.

(e) Annual report

The Secretary shall prepare and submit to the President for transmittal to the Congress on or before May 1 of each year a comprehensive report on the transportation of hazardous materials during the preceding calendar year. Such report shall include, but need not be limited to—

(1) a thorough statistical compilation of any accidents and casualties involving the transportation of hazardous materials;

(2) a list and summary of applicable Federal regulations, criteria, orders, and exemptions in effect;

(3) a summary of the basis for any exemptions granted or maintained;

(4) an evaluation of the effectiveness of enforcement activities and the degree of voluntary compliance with applicable regulations;

(5) a summary of outstanding problems confronting the administration of this chapter, in order of priority; and

(6) such recommendations for additional legislation as are deemed necessary or appropriate.

(Pub. L. 93-633, title I, § 109, Jan. 3, 1975, 88 Stat. 2159.)

References in Text

This chapter, referred to in subsecs. (a), (b), (e)(5), read in the original "this title", meaning title I of Pub. L. 93-633, Jan. 3, 1975, 88 Stat. 2156, which is classified principally to this chapter. For complete classification of title I of Pub. L. 93-633 to the Code, see Short Title note set out under section 1801 of this title and Tables volume.

§ 1809. Penalties

(a) Civil

(1) Any person (except an employee who acts without knowledge) who is determined by the Secretary, after notice and an opportunity for a hearing, to have knowingly committed an act which is a violation of a provision of this chapter or of a regulation issued under this chapter, shall be liable to the United States for a civil penalty. Whoever knowingly commits an act which is a violation of any regulation, applicable to any person who transports or causes to be transported or shipped hazardous materials, shall be subject to a civil penalty of not more than $10,000 for each violation, and if any such violation is a continuing one, each day of violation constitutes a separate offense. Whoever knowingly commits an act which is a violation of any regulation applicable to any person who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person for use in the transportation in commerce of hazardous materials shall be subject to a civil penalty of not more than $10,000 for each violation. The amount of any such penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(2) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States or, prior to referral to the Attorney General, such civil penalty may be compromised by the Secretary. The amount of such penalty, when finally determined (or agreed upon in compromise), may be deducted from any sums owed by the United States to the person charged. All penalties collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts.

(b) Criminal

A person is guilty of an offense if he willfully violates a provision of this chapter or a regulation issued under this chapter. Upon conviction, such person shall be subject, for each offense, to a fine of not more than $25,000, imprisonment for a term not to exceed 5 years, or both.

(Pub. L. 93-633, title I, § 110, Jan. 3, 1975, 88 Stat. 2160.)

References in Text

This chapter, referred to in subsecs. (a)(1), (b), read in the original "this title", meaning title I of Pub. L. 93-633, Jan. 3, 1975, 88 Stat. 2156, which is classified

principally to this chapter. For complete classification of title I of Pub. L. 93-633 to the Code, see Short Title note set out under section 1801 of this title and Tables volume.

§ 1810. Specific relief

(a) General

The Attorney General, at the request of the Secretary, may bring an action in an appropriate district court of the United States for equitable relief to redress a violation by any person of a provision of this chapter, or an order or regulation issued under this chapter. Such district courts shall have jurisdiction to determine such actions and may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

(b) Imminent hazard

If the Secretary has reason to believe that an imminent hazard exists, he may petition an appropriate district court of the United States, or upon his request the Attorney General shall so petition, for an order suspending or restricting the transportation of the hazardous material responsible for such imminent hazard, or for such other order as is necessary to eliminate or ameliorate such imminent hazard. As used in this subsection, an "imminent hazard" exists if there is substantial likelihood that serious harm will occur prior to the completion of an administrative hearing or other formal proceeding initiated to abate the risk of such harm.

(Pub. L. 93-633, title I, § 111, Jan. 3, 1975, 88 Stat. 2161.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), read in the original "this title", meaning title I of Pub. L. 93-633, Jan. 3, 1975, 88 Stat. 2156, which is classified principally to this chapter. For complete classification of title I of Pub. L. 93-633 to the Code, see Short Title note set out under section 1801 of this title and Tables volume.

§ 1811. Relationship to other laws

(a) General

Except as provided in subsection (b) of this section, any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in this chapter, or in a regulation issued under this chapter, is preempted.

(b) State laws

Any requirement, of a State or political subdivision thereof, which is not consistent with any requirement set forth in this chapter, or in a regulation issued under this chapter, is not preempted if, upon the application of an appropriate State agency, the Secretary determines, in accordance with procedures to be prescribed by regulation, that such requirement (1) affords an equal or greater level of protection to the public than is afforded by the requirements of this chapter or of regulations issued under this chapter and (2) does not unreasonably burden commerce. Such requirement shall not be preempted to the extent specified in such determination by the Secretary for so long as such State or political subdivision thereof continues to administer and enforce effectively such requirement.

(c) Other federal laws

The provisions of this chapter shall not apply to pipelines which are subject to regulation under the Natural Gas Pipeline Safety Act of 1968 (section 1671 et seq. of this title) or to pipelines which are subject to regulation under chapter 39 of title 18.

(Pub. L. 93-633, title I, § 112, Jan. 3, 1975, 88 Stat. 2161.)

REFERENCES IN TEXT

This chapter, referred to in text, read in the original "this title", meaning title I of Pub. L. 93-633, Jan. 3, 1975, 88 Stat. 2156, which is classified principally to this chapter. For complete classification of title I of Pub. L. 93-633 to the Code, see Short Title note set out under section 1801 of this title and Tables volume.

The Natural Gas Pipeline Safety Act of 1968, referred to in subsec. (c), is Pub. L. 90-481, Aug. 12, 1968, 82 Stat. 720, as amended, which is classified generally to chapter 24 (§ 1671 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1671 of this title and Tables volume.

§ 1812. Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this chapter not to exceed $7,000,000 for the fiscal year ending June 30, 1976, not to exceed $1,750,000 for the transition period of July 1, 1976, through September 30, 1976, and not to exceed $5,000,000 per fiscal year for the fiscal years ending September 30, 1977, and September 30, 1978.

(Pub. L. 93-633, title I, § 115, Jan. 3, 1975, 88 Stat. 2164; Pub. L. 94-56, § 4, July 19, 1975, 89 Stat. 264; Pub. L. 94-474, § 3, Oct. 11, 1976, 90 Stat. 2068.)

REFERENCES IN TEXT

This chapter, referred to in text, read in the original "this title", meaning title I of Pub. L. 93-633, Jan. 3, 1975, 88 Stat. 2156, which is classified principally to this chapter. For complete classification of title I of Pub. L. 93-633 to the Code, see Short Title note set out under section 1801 of this title and Tables volume.

AMENDMENTS

1976—Pub. L. 94-474 struck out "and" following "June 30, 1976" and added "and not to exceed $5,000,000 per fiscal year for the fiscal years ending September 30, 1977, and September 30, 1978." following "September 30, 1976".

1975—Pub. L. 94-56 substituted provisions authorizing appropriations of not to exceed $7,000,000 for the fiscal year ending June 30, 1976, and not to exceed $1,750,000 for the transition period of July 1, 1976, through Sept. 30, 1976, for provisions authorizing appropriations not to exceed $7,000,000 for the fiscal year ending June 30, 1975.

CHAPTER 28—NATIONAL TRANSPORTATION SAFETY BOARD

Sec.
1901. Congressional findings.
1902. National Transportation Safety Board.
(a) Establishment.
(b) Organization.
(c) General.
1903. General provisions.
(a) Duties of Board.
(b) Powers of Board.
(c) Use of reports as evidence.
(d) Judicial review.
1904. Annual report.

Sec.
1905. Public access to information.
(a) General.
(b) Exception.
1906. Response to Board recommendations.
1907. Authorization of appropriations.

§ 1901. Congressional findings

The Congress finds and declares:

(1) The National Transportation Safety Board was established by statute in 1966 (Public Law 89-670; 80 Stat. 935) as an independent Government agency, located within the Department of Transportation, to promote transportation safety by conducting independent accident investigations and by formulating safety improvement recommendations.

(2) Proper conduct of the responsibilities assigned to this Board requires vigorous investigation of accidents involving transportation modes regulated by other agencies of Government; demands continual review, appraisal, and assessment of the operating practices and regulations of all such agencies; and calls for the making of conclusions and recommendations that may be critical of or adverse to any such agency or its officials. No Federal agency can properly perform such functions unless it is totally separate and independent from any other department, bureau, commission, or agency of the United States.

(Pub. L. 93-633, title III, § 302, Jan. 3, 1975, 88 Stat. 2166.)

REFERENCES IN TEXT

Public Law 89-670; 80 Stat. 935, referred to in par. (1), is Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, known as the Department of Transportation Act, which is classified principally to chapter 23 (§ 1651 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1651 of this title and Tables volume.

SHORT TITLE

Section 301 of Pub. L. 93-633 provided that: "This title [which enacted this chapter, amended section 1653 of this title, and repealed section 1654 of this title] may be cited as the 'Independent Safety Board Act of 1974'."

§ 1902. National Transportation Safety Board

(a) Establishment

The National Transportation Safety Board (hereafter in this chapter referred to as the "Board"), previously established within the Department of Transportation, shall be an independent agency of the United States, in accordance with this section, on and after April 1, 1975.

(b) Organization

(1) The Board shall consist of five members, including a Chairman. Members of the Board shall be appointed by the President, by and with the advice and consent of the Senate. No more than three members of the Board shall be of the same political party. At any given time, no less than two members of the Board shall be individuals who have been appointed in the field of accident reconstruction, safety engineering, or transportation safety.

(2) The terms of office of members of the Board shall be 5 years, except as otherwise provided in this paragraph. Any individual appointed to fill a vacancy occurring on the Board prior to the expiration of the term of office for which his predecessor was appointed shall be appointed for the remainder of that term. Upon the expiration of his term of office, a member shall continue to serve until his successor is appointed and shall have qualified. Individuals serving as members of the National Transportation Safety Board on January 3, 1975, shall continue to serve as members of the Board until the expiration of their then current term of office. Any member of the Board may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(3) On or before January 1, 1976 (and thereafter as required), the President shall—

(A) designate, by and with the advice and consent of the Senate, an individual to serve as the Chairman of the Board (hereafter in this chapter referred to as the "Chairman"); and

(B) an individual to serve as Vice Chairman.

The Chairman and Vice Chairman each shall serve for a term of 2 years. The Chairman shall be the chief executive officer of the Board and shall exercise the executive and administrative functions of the Board with respect to the appointment and supervision of personnel employed by the Board; the distribution of business among such personnel and among any administrative units of the Board; and the use and expenditure of funds. The Vice Chairman shall act as Chairman in the event of the absence or incapacity of the Chairman or in case of a vacancy in the office of Chairman. The Chairman or Acting Chairman shall be governed by the general policies established by the Board, including any decisions, findings, determinations, rules, regulations, and formal resolutions.

(4) Three members of the Board shall constitute a quorum for the transaction of any function of the Board.

(5) The Board shall establish and maintain distinct and appropriately staffed bureaus, divisions, or offices to investigate and report on accidents involving each of the following modes of transportation: (A) aviation; (B) highway and motor vehicle; (C) railroad and tracked vehicle; and (D) pipeline. The Board shall, in addition, establish and maintain any other such office as is needed, including an office to investigate and report on the safe transportation of hazardous materials.

(c) General

(1) The General Services Administration shall furnish the Board with such offices, equipment, supplies, and services as it is authorized to furnish to any other agency or instrumentality of the United States.

(2) The Board shall have a seal which shall be judicially recognized.

(3) Subject to the civil service and classification laws, the Board is authorized to select, appoint, employ, and fix the compensation of such officers and employees, including investigators, attorneys, and administrative law judges, as shall be necessary to carry out its powers and duties under this chapter.

(Pub. L. 93-633, title III, § 303, Jan. 3, 1975, 88 Stat. 2167.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (c), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

The classification laws, referred to in subsec. (c)(3), are classified generally to chapter 51 (§ 5101 et seq.) and to subchapter III (§ 5331 et seq.) of chapter 53 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in Pub. L. 89-670, § 5, Oct. 15, 1966, 80 Stat. 935, which was classified to section 1654 of this title and which was repealed by Pub. L. 93-633, title III, § 308(1), Jan. 3, 1975, 88 Stat. 2173.

§ 1903. General provisions

(a) Duties of Board

The Board shall—

(1) investigate or cause to be investigated (in such detail as it shall prescribe), and determine the facts, conditions, and circumstances and the cause or probable cause or causes of any—

(A) aircraft accident which is within the scope of the functions, powers, and duties transferred from the Civil Aeronautics Board under section 1655(d) of this title pursuant to title VII of the Federal Aviation Act of 1958, as amended [49 U.S.C. 1441 et seq.];

(B) highway accident, including any railroad grade crossing accident, that it selects in cooperation with the States;

(C) railroad accident in which there is a fatality, substantial property damage, or which involves a passenger train;

(D) pipeline accident in which there is a fatality or substantial property damage;

(E) major marine casualty, except one involving only public vessels, occurring on the navigable waters or territorial seas of the United States, or involving a vessel of the United States, in accordance with regulations to be prescribed jointly by the Board and the Secretary of the department in which the Coast Guard is operating. Nothing in this subparagraph shall be construed to eliminate or diminish any responsibility under any other Federal statute of the Secretary of the Department in which the Coast Guard is operating: *Provided*, That any marine accident involving a public vessel and any other vessel shall be investigated and the facts, conditions, and circumstances, and the cause or probable cause determined and made available to the public by either the Board or the Secretary of the Department in which the Coast Guard is operating; and

(F) other accident which occurs in connection with the transportation of people or property which, in the judgment of the Board, is catastrophic, involves problems of a recurring character, or would otherwise carry out the policy of this chapter.

The Board may request the Secretary of Transportation (hereafter in this chapter referred to as the "Secretary") to make investigations with regard to such accidents and to report to the Board the facts, conditions, and circumstances thereof (except in accidents where misfeasance or nonfeasance by the Federal Government is alleged), and the Secretary or his designees are authorized to make such investigations. Thereafter, the Board, utilizing such reports, shall make its determination of cause or probable cause under this paragraph;

(2) report in writing on the facts, conditions, and circumstances of each accident investigated pursuant to paragraph (1) of this subsection and cause such reports to be made available to the public at reasonable cost and to cause notice of the issuance and availability of such reports to be published in the Federal Register;

(3) issue periodic reports to the Congress, Federal, State, and local agencies concerned with transportation safety, and other interested persons recommending and advocating meaningful responses to reduce the likelihood of recurrence of transportation accidents similar to those investigated by the Board and proposing corrective steps to make the transportation of persons as safe and free from risk of injury as is possible, including steps to minimize human injuries from transportation accidents;

(4) initiate and conduct special studies and special investigations on matters pertaining to safety in transportation including human injury avoidance;

(5) assess and reassess techniques and methods of accident investigation and prepare and publish from time to time recommended procedures for accident investigations;

(6) establish by regulation requirements binding on persons reporting accidents subject to the Board's investigatory jurisdiction under this subsection;

(7) evaluate, assess the effectiveness, and publish the findings of the Board with respect to the transportation safety consciousness and efficacy in preventing accidents of other Government agencies;

(8) evaluate the adequacy of safeguards and procedures concerning the transportation of hazardous materials and the performance of other Government agencies charged with assuring the safe transportation of such materials; and

(9) review on appeal (A) the suspension, amendment, modification, revocation, or denial of any operating certificate or license issued by the Secretary of Transportation under sections 1422, 1429, or 1431(e) of this title; and (B) the decisions of the Commandant of the Coast Guard, on appeals from the orders of any administrative law judge revoking, suspending, or denying a license, certificate, document, or register in proceedings under section 239 of title 46, sections 239a and 239b of title 46; or section 216b of title 46.

(b) Powers of Board

(1) The Board, or upon the authority of the Board, any member thereof, any administrative law judge employed by or assigned to the Board, or any officer or employee duly designated by the Chairman, may, for the purpose of carrying out this chapter, hold such hear-

ings, sit and act at such times and places, administer such oaths, and require by subpoena or otherwise the attendance and testimony of such witnesses and the production of such evidence as the Board or such officer or employee deems advisable. Subpoenas shall be issued under the signature of the Chairman, or his delegate, and may be served by any person designated by the Chairman. Witnesses summoned to appear before the Board shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Such attendance of witnesses and production of evidence may be required from any place in the United States to any designated place of such hearing in the United States.

(2) Any employee of the Board, upon presenting appropriate credentials and a written notice of inspection authority, is authorized to enter any property wherein a transportation accident has occurred or wreckage from any such accident is located and do all things therein necessary for a proper investigation. The employee may inspect, at reasonable times, records, files, papers, processes, controls, and facilities relevant to the investigation of such accident. Each inspection shall be commenced and completed with reasonable promptness and the results of such inspection made available.

(3) In case of contumacy or refusal to obey a subpoena, an order, or an inspection notice of the Board, or of any duly designated employee thereof, by any person who resides, is found, or transacts business within the jurisdiction of any district court of the United States, such district court shall, upon the request of the Board, have jurisdiction to issue to such person an order requiring such person to comply forthwith. Failure to obey such an order is punishable by such court as a contempt of court.

(4) The Board is authorized to enter into without regard to section 5 of title 41, such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the functions and the duties of the Board under this chapter, with any government entity or any person.

(5) The Board is authorized to obtain, and shall be furnished, with or without reimbursement, a copy of the report of the autopsy performed by State or local officials on any person who dies as a result of having been involved in a transportation accident within the jurisdiction of the Board and, if necessary, the Board may order the autopsy or seek other tests of such persons as may be necessary to the investigation of the accident: *Provided*, That to the extent consistent with the need of the accident investigation, provisions of local law protecting religious beliefs with respect to autopsies shall be observed.

(6) The Board is authorized to (A) use, on a reimbursable basis or otherwise, when appropriate, available services, equipment, personnel, and facilities of the Department of Transportation and of other civilian or military agencies and instrumentalities of the Federal Government; (B) confer with employees and use available services, records, and facilities of State, municipal, or local governments and agencies; (C) employ experts and consultants in accordance with section 3109 of title 5; (D) appoint one or more advisory committees composed of qualified private citizens or officials of Federal, State, or local governments as it deems necessary or appropriate, in accordance with the Federal Advisory Committee Act; (E) accept voluntary and uncompensated services notwithstanding any other provision of law; (F) accept gifts or donations of money or property (real, personal, mixed, tangible, or intangible); and (G) enter into contracts with public or private nonprofit entities for the conduct of studies related to any of its functions.

(7) Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget estimate, or other budget information, legislative recommendation, prepared testimony for congressional hearings, or comment on legislation to the President or to the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Board to submit its budget requests or estimates, legislative recommendations, prepared testimony for congressional hearings, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(8) The Board is empowered to designate representatives to serve or assist on such committees as the Chairman determines to be necessary or appropriate to maintain effective liaison with other Federal agencies, and with State and local government agencies, and with independent standard-setting bodies carrying out programs and activities related to transportation safety.

(9) The Board, or an employee of the Board duly designated by the Chairman, may conduct an inquiry to secure data with respect to any matter pertinent to transportation safety, upon publication of notice of such inquiry in the Federal Register; and may require, by special or general orders, Federal, State, and local government agencies and persons engaged in the transportation of people or property in commerce to submit written reports and answers to such requests and questions as are propounded with respect to any matter pertinent to any function of the Board. Such reports and answers shall be submitted to the Board or to such employee within such reasonable period of time and in such form as the Board may determine. Copies thereof shall be made available for inspection by the public.

(10) Establish such rules and regulations as may be necessary to the exercise of its functions.

(c) Use of reports as evidence

No part of any report of the Board, relating to any accident or the investigation thereof, shall be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such report or reports.

(d) Judicial review

Any order, affirmative or negative, issued by the Board under this chapter shall be subject to review by the appropriate court of appeals of the United States or the United States Court of Appeals for the District of Columbia, upon peti-

tion filed within 60 days after the entry of such order, by any person disclosing a substantial interest in such order. Such review shall be conducted in accordance with the provisions of chapter 7 of title 5.

(Pub. L. 93–633, title III, § 304, Jan. 3, 1975, 88 Stat. 2168.)

REFERENCES IN TEXT

The Federal Aviation Act of 1958, as amended, referred to in subsec. (a)(1)(A), is Pub. L. 85–726, Aug. 23, 1958, 72 Stat. 731, as amended. Title VII of the Federal Aviation Act of 1958 is classified generally to chapter VII (§ 1441 et seq.) of chapter 20 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables volume.

Federal Advisory Committee Act, referred to in subsec. (b)(6)(D), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In subsec. (a)(9), reference to section "1431(e)" was in the original "1431(c)", and was changed by the codifiers to reflect the probable intent of Congress as section "1431(c)" was redesignated "1431(e)" by Pub. L. 92–574, § 7(b), Oct. 27, 1972, 86 Stat. 1239.

§ 1904. Annual report

The Board shall report to the Congress on July 1 of each year. Such report shall include, but need not be limited to—

(1) a statistical and analytical summary of the transportation accident investigations conducted and reviewed by the Board during the preceding calendar year;

(2) a survey and summary, in such detail as the Board deems advisable, of the recommendations made by the Board to reduce the likelihood of recurrence of such accidents together with the observed response to each such recommendation;

(3) an appraisal in detail of the accident investigation and accident prevention activities of other government agencies charged by Federal or State law with responsibility in this field; and

(4) a biennial appraisal and evaluation and review, and recommendations for legislative and administrative action and change, with respect to transportation safety.

(Pub. L. 93–633, title III, § 305, Jan. 3, 1975, 88 Stat. 2171.)

§ 1905. Public access to information

(a) General

Copies of any communication, document, investigation, or other report, or information received or sent by the Board, or any member or employee of the Board, shall be made available to the public upon identifiable request, and at reasonable cost, unless such information may not be publicly released pursuant to subsection (b) of this section. Nothing contained in this section shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5, or which is otherwise protected by law from disclosure to the public.

(b) Exception

The Board shall not disclose information obtained under this chapter which concerns or relates to a trade secret referred to in section 1905 of title 18, except that such information may be disclosed in a manner designed to preserve confidentiality—

(1) upon request, to other Federal Government departments and agencies for official use;

(2) upon request, to any committee of Congress having jurisdiction over the subject matter to which the information relates;

(3) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceedings; and

(4) to the public in order to protect health and safety, after notice to any interested person to whom the information pertains and an opportunity for such person to comment in writing, or orally in closed session, on such proposed disclosure (if the delay resulting from such notice and opportunity for comment would not be detrimental to health and safety).

(Pub. L. 93–633, title III, § 306, Jan. 3, 1975, 88 Stat. 2172.)

§ 1906. Response to Board recommendations

Whenever the Board submits a recommendation regarding transportation safety to the Secretary, he shall respond to each such recommendation formally and in writing not later than 90 days after receipt thereof. The response to the Board by the Secretary shall indicate his intention to—

(1) initiate and conduct procedures for adopting such recommendation in full, pursuant to a proposed timetable, a copy of which shall be included;

(2) initiate and conduct procedures for adopting such recommendation in part, pursuant to a proposed timetable, a copy of which shall be included. Such response shall set forth in detail the reasons for the refusal to proceed as to the remainder of such recommendation; or

(3) refuse to initiate or conduct procedures for adopting such recommendation. Such response shall set forth in detail the reasons for such refusal.

The Board shall cause notice of the issuance of each such recommendation and of each receipt of a response thereto to be published in the Federal Register, and shall make copies thereof available to the public at reasonable cost.

(Pub. L. 93–633, title III, § 307, Jan. 3, 1975, 88 Stat. 2172.)

§ 1907. Authorization of appropriations

There are authorized to be appropriated for the purposes of this Act not to exceed $12,000,000 for the fiscal year ending June 30, 1975; and $12,000,000 for the fiscal year ending June 30, 1976, such sums to remain available until expended. There are authorized to be appropriated for the purpose of this Act not to exceed $3,800,000 for the transition quarter ending September 30, 1976, $15,200,000 for the

fiscal year ending September 30, 1977, and $16,400,000 for the fiscal year ending September 30, 1978, such sums to remain available until expended.

(Pub. L. 93–633, title III, § 309, Jan. 3, 1975, 88 Stat. 2173; Pub. L. 94–481, Oct. 11, 1976, 90 Stat. 2080.)

REFERENCES IN TEXT

"This Act", referred to in text, means Pub. L. 93–633, Jan. 3, 1975, 88 Stat. 2156, known as the Transportation Safety Act of 1974, which enacted this chapter and sections 1801 to 1812 of this title, amended sections 1471, 1472, 1653, and 1655 of this title, sections 39, 437, 438, 440, and 441 of Title 45, Railroads, and section 170 of Title 46, Shipping, repealed sections 1654, 1761, and 1762 of this title, and enacted provisions set out as notes under sections 1801 and 1901 of this title and section 440 of Title 45. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables volume.

AMENDMENTS

1976—Pub. L. 94–481 authorized appropriations of not to exceed $3,800,000 for the transition quarter ending Sept. 30, 1976, $15,200,000 for the fiscal year ending Sept. 30, 1977, and $16,400,000 for the fiscal year ending Sept. 30, 1978, with such sums to remain available until expended.